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THIRTIETH ANNUAL REPORT

c#

OF THE

*Kentucky*  
**RAILROAD COMMISSION**

OF

**KENTUCKY**

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**FOR THE YEAR 1909**

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**Property of the State of Kentucky**

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**LOUISVILLE, KY.  
THE CONTINENTAL PRINTING COMPANY  
1910.**

APR 10 1915



## RAILROAD COMMISSION

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COMMISSIONERS: { A. T. SILER, Chairman.....Williamsburg, Ky.  
L. P. TARLTON.....Frankfort, Ky.  
LAURENCE B. FINN.....Franklin, Ky.

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ROY WILHOIT, Rate Clerk.....Louisville, Ky.  
D. B. CORNETT, Secretary.....Harlan, Ky.  
MINNIE MURPHY, Official Stenographer.....Williamsburg, Ky.



## RAILROAD COMMISSIONERS OF KENTUCKY

---

HENRY D. McHENRY, August 2, 1878, Chairman.

LUCIUS DESHA, August 2, 1878.

W. H. PETTUS, August 2, 1878.

L. H. HOLLOWAY, August 2, 1878, Secretary.

J. FLETCHER JOHNSTON, September 1, 1880, Chairman.

C. H. ROCHESTER, September 1, 1880.

C. E. KINCAID, September 1, 1880.

LANSING BURROWS, September 1, 1880, Secretary.

D. HOWARD SMITH, 1882, Chairman.

WILLIS B. MACHEN, 1882.

WILLIAM M. BECKNER, 1882.

HENRY T. STANTON, 1882, Secretary.

J. P. THOMPSON, 1884, Chairman.

JOHN D. YOUNG, 1884.

A. R. BOONE, 1884. (Died January 27, 1886.)

I. A. SPAULDING, MAY, 1886. (Appointed to fill unexpired term of A. R. Boone, deceased.)

CLARENCE EGBERT, 1884, Secretary.

I. A. SPAULDING, May, 1888, Chairman.

W. B. FLEMING, May, 1888.

JOHN F. HAGER, May, 1888. (Resigned.)

GEORGE M. ADAMS, 1891. (Appointed to fill unexpired term of John F. Hager, resigned.)

Wm. F. GRIFFITH, Secretary.

C. C. McCHORD, May 24, 1892, Chairman. (Resigned.)

UREY WOODSON, May, 24, 1892.

CHARLES B. POYNTZ, May 24, 1892.

JAMES N. SAUNDERS. (Appointed to fill unexpired term of C. C. McChord, resigned.)

D. C. HARDIN, May 24, 1892, Secretary.

JOHN C. WOOD, December 10, 1895, Chairman.

H. S. IRWIN, December 10, 1895.

J. F. DEMPSEY, December 10, 1895.

S. D. BROWN, December 10, 1895, Secretary.

C. C. McCHORD, December 12, 1899, Chairman.

JOHN C. WOOD, December 12, 1899.

J. F. DEMPSEY, December 12, 1899.

MURRAY R. HUBBARD, February, 1900, Secretary.

C. C. McCHORD, December 8, 1903, Chairman. (Resigned.)

McD. FERGUSON, December 8, 1903.

## RAILROAD COMMISSIONERS OF KENTUCKY—Continued

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A. T. SILER, December 8, 1903.

W. P. WALTON. (Appointed to fill unexpired term of C. C. McChord, resigned.)

JOHN E. NEWMAN, Rate Clerk, 1906.

MOSES R. GLENN, December 8, 1903, Secretary.

G. H. BOONE, Official Stenographer, 1906.

A. T. SILER, Chairman, December 12, 1907.

McD. FERGUSON, December 12, 1907 to June 17, 1909. (Deceased.)

L. P. TARLTON, December 12, 1907.

JOHN P. HASWELL, JR. (Appointed June 24, 1909. Served until December 1, 1909).

LAURENCE B. FINN, December 1, 1909.

ROY WILHOIT, Secretary, December 12, 1907. (Promoted to Rate Clerk, May 1, 1908.)

D. B. CORNETT, Secretary, May 1, 1908.

MINNIE MURPHY, Official Stenographer, December 12, 1907.







THIRTIETH ANNUAL REPORT  
OF THE  
RAILROAD COMMISSION  
OF KENTUCKY

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*Office of the Railroad Commission  
Frankfort, Ky., November 30, 1909.*

TO THE HONORABLE AUGUSTUS E. WILLSON,  
*Governor of Kentucky:*

The Railroad Commission submits for your consideration its Thirtieth Annual Report.

The year 1909 has been a most important one for this Commission, having heard and disposed of a large number of important complaints, and many minor ones. We believe that some of the decisions rendered, and which are herein reported in full, will set precedents for many years to come in the way of relief to shippers, and carriers as well.

MILEAGE.

The operating mileage of railroads in Kentucky for 1909, is 3,582. For the year 1908 it was 3,574, making a gain of 8 miles for 1909.

EARNINGS.

For the fiscal year ended June 30, 1909, as compared with that of June 30, 1908, there is a gain in gross earnings of railroads in this State, the sum of \$123,716; the gross receipts for 1908 being \$40,152.200 and for 1909, \$40,275.916. This speaks well for Kentucky, taking into consideration the fact that there was a general falling off in railroad earnings all over the entire country.

## NET RECEIPTS.

For the fiscal year ended June 30, 1908, the net receipts for railroads operating in Kentucky was \$10,767,745. For that ended June 30, 1909, it was \$14,119,190, an increase of \$2,351,436. This is a big gain over last year, and although it was partly brought about by a reduction in operating expenses by a majority of carriers, yet the increase made in gross receipts warrants the assertion that the increase in both gross and net earnings will be much larger for the coming year.

## IMPROVEMENTS.

The year 1909 has been one noted for improvements in the way of better facilities for the traveling public. The Commission has disposed of every complaint brought before it, complaining of inadequate facilities, and where there was merit in such complaint, orders have been entered by the Commission and carried out to the letter by the carriers concerned. Special attention is called elsewhere in this report to the splendid improvements made in the way of construction of new depots throughout the State.

## ASSESSMENT OF TANGIBLE PROPERTY.

The slight increase in gross earnings, and the wonderful increase in net earnings for roads operating in Kentucky, warranted a material increase in valuation of mileage and other property for the year 1909. The earnings justified an increase for practically every line in the State, resulting in a total increase of \$2,060,139.50 in valuation, making a large increase in the amount of taxes to be paid by railroads in this State the current year.

## STATISTICAL.

Below is shown a comparison of the assessments made by the Railroad Commission of tangible property of all railroads in Kentucky for the past ten years:

|      |       |                 |
|------|-------|-----------------|
| 1900 | ----- | \$52,184,787.00 |
| 1901 | ----- | 52,432,428.00   |
| 1902 | ----- | 51,944,384.00   |

|      |       |               |
|------|-------|---------------|
| 1903 | ----- | 52,253,766.00 |
| 1904 | ----- | 54,181,031.00 |
| 1905 | ----- | 61,149,224.00 |
| 1906 | ----- | 63,968,715.00 |
| 1907 | ----- | 64,103,219.00 |
| 1908 | ----- | 63,753,699.00 |
| 1909 | ----- | 65,813,838.50 |

## COMPARISONS.

Following are gross and net earnings of all railroads in Kentucky for the year ended June 30, 1909, compared with that of June 30, 1908.

Total gross receipts for the year 1908 -----\$40,152,200.00

Total gross receipts for the year 1909 ----- 40,275,916.00

Increase ----- 123,716.00

Total net receipts for the year 1908 -----\$10,767,754.00

Total net receipts for the year 1909 ----- 14,119,190.00

Increase ----- 3,351,436.00

Operating mileage 1908 -----3,574

Operating mileage 1909-----3,582

Increase -----8 miles.

Valuation of mileage 1908 -----\$57,176,092.00

Valuation of mileage 1909 --\$50,291,903.50

Add valuation of bridges

and bridge approaches----- 8,752,040.00

Total ----- \$59,043,943.50

Increase ----- \$1,867,851.50

Valuation of other property, 1908 ----- \$6,581,057.00

Valuation of other property, 1909 ----- \$6,844,895.00

Increase ----- \$ 263,838.00

Total valuation for 1908 ----- \$63,753,699.00

Total valuation for 1909 ----- \$65,813,838.50

Increase ----- \$2,060,139.50

## THIRTIETH ANNUAL REPORT OF

## ACCIDENTS TO PERSONS.

It is pleasing to note the decrease in number of accidents to persons resulting in death for current year. Following is table of comparison between years of 1908 and 1909:

|   |       |
|---|-------|
| Employees killed 1908 -----               | 48    |
| Employees killed 1909 -----               | 20    |
| Decrease -----                            | 28    |
| Employees injured 1908 -----              | 1,139 |
| Employees injured 1909 -----              | 1,155 |
| Increase -----                            | 16    |
| Passengers and others killed, 1908 -----  | 119   |
| Passengers and others killed, 1909 -----  | 117   |
| Decrease -----                            | 2     |
| Passengers and others injured 1908 -----  | 119   |
| Passengers and others injured, 1909 ----- | 192   |
| Increase -----                            | 73    |
| Total killed 1908 -----                   | 167   |
| Total killed 1909 -----                   | 137   |
| Decrease -----                            | 30    |

However, it will be seen that there was a distressing increase in the number of accidents to persons, in which injuries were sustained.

|                          |       |
|--------------------------|-------|
| Total injured 1908 ----- | 1,258 |
| Total injured 1909 ----- | 1,347 |
| Increase -----           | 89    |

## NEEDED LEGISLATION.

The regulation of railway corporations and other common carriers and their traffic otherwise than by the rules of the Common Law, in response to the demand of the public, was begun about thirty years ago through the instrumentality as an experiment of the governmental commission, to which was delegated the execution and enforcement of the laws enacted to protect the interests of the public, without disturbing the legitimate business of the carriers. Now this commission is an accepted part, not only of the State, but of the Federal govern-



ment. Kentucky was one of the first States to create such a Commission and to enact such laws. Many of these laws, and very important ones as then enacted have been either declared by the Court of Appeals to be void for uncertainty, or by the United States Supreme Court to be in violation of the United States Constitution. Although Congress, and the Legislatures of other States have from time to time enacted laws to conform to the decisions of the Courts and to meet the changing conditions and practices in the transportation problem, yet in our State no new Statutes or amendments to the old ones regarding that subject have been enacted in the last fifteen or twenty years. There is great need for such legislation, and we earnestly ask that the Governor direct the attention of the General Assembly to this important subject.

#### SUGGESTIONS.

Considering the experience of the Commission gained under the practical operation of the Statutes relating to common carriers, we feel that it may not be improper, perhaps, to make the following specific recommendations:

First. In our opinion the laws of this State should be so amended as to empower the Railroad Commission to fix the entire assessment and valuation, including franchise, of every steam railroad, street railway, express, bridge, telegraph, palace car, dining car, sleeping car, chair-car and steamboat company and every other like company, corporation or association.

As the law now exists the Board of Valuation and Assessment determines the valuation of the franchise of the above named corporations, while The Railroad Commission corrects and equalizes the valuation of the tangible property of such corporations. Thus the question of fixing the value of properties of such corporations is given two distinct and separate Boards, when, in our judgment, the better plan would be to have these questions worked out, passed upon, and determined by one board.

2. Under the present statutes the Railroad Commission, where the public interest requires it, may cause a gate to be erected or maintained, or flagman stationed at any highway crossing, within one mile of the corporate limits of any incorporated city or town of this Commonwealth, but the Commission has no power to cause a gate to be

erected or maintained, or a flagman stationed at any highway crossing, notwithstanding its danger, if same is further than one mile from the corporate limits of an incorporated city or town; or if such dangerous crossing is within a town unincorporated. The statutes should be amended, we think, so as to give the Railroad Commission power to regulate crossings at grade, and to provide against accidents, by having flagmen stationed at them, or by having gates erected; or providing for their discontinuance under some well regulated, pre-conceived plan between the railroad company and the city, town or county. The great number of people killed and crippled at these grade crossings each year makes it necessary that the State should give some attention to this subject.

3. In our opinion the rates, connections and conduct of telephone, telegraph and express companies, in dealing with the public should be regulated by statute. The vast number of complaints which have reached The Railroad Commission, complaining of abuses by such corporations, leads the Commission to the conclusion that there should be legislation upon this subject to the extent that their conduct in dealing with the public will be regulated, as are the rates and conduct of railroad companies. While this would require a great deal more work by the Commission, in our opinion such work should be done by said Commission, and could be done with advantage and satisfaction both to the public and the corporation.

4. It will be seen from this report that a great number of passengers and others were killed during the years 1908 and 1909. It will also be seen that a vast number of people were injured during the years above referred to. The reports made by carriers, as required by law, to this commission, show that more than one-half of the people injured and killed during said years, under the head of "Passengers and others killed" were pedestrians, traveling on the railroad. In our judgment the only way to save a great many of our people from being killed or injured is to have a law enacted which will serve to prevent people from trespassing on the railroad and making a high-way out of it, without lessening the duty of the company to such pedestrians, and giving the Commission authority to enforce the use of the most modern safety appliances on trains, and at crossings, thus better safeguarding the lives of employees and the traveling pub-

lic, and to require prompt report of accidents when the loss of life, and great bodily injury resulted, and to investigate the cause thereof.

## ASSISTANCE OF THE ATTORNEY-GENERAL.

The Commission acknowledges the valuable assistance rendered promptly, whenever called for, by the Attorney-General and his assistants, in the discharge of its duties and making its findings.

Following, under different heads is given a full and accurate report of the workings of this Commission for the year 1909, and we point with pride to the important results of our labors of the past year.

Respectfully submitted,

(Signed)

A. T. SILER, *Chairman,*

L. P. TARLTON,

JOHN P. HASWELL, JR.,

*Commissioners.*



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# RULES OF PRACTICE

The Railroad Commission

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# RULES OF PRACTICE

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## Railroad Commission of Kentucky

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1. Regular sessions of the Commission for hearing, considering and deciding contested cases, and any other matters properly before it, will be held at its office in Frankfort, Kentucky, on the first Wednesday in each month, and be continued from day to day when necessary. If the day so designated should at any time fall upon a legal holiday, then the session shall be held upon the day next following.

2. Special sessions of the Commission may be held at any time or place after due notice thereof to all interested parties, when, in the judgment of the Chairman, or of the other two members, the public interests or the duties of the Commission require it.

3. Should a quorum of the Commission not be present on the day named for any regular or special session *when there are on the docket contested cases or other matters ready for hearing or decision*, then, in that event, the member present, if any, or the Secretary, shall adjourn the same from day to day, making note thereof on the record until a quorum is present, when the business shall be proceeded with the same as if there had been a quorum present on the day named for that session. When it is known in advance to the Secretary that there will not be a quorum present for any session, he shall, if practicable so advise all interested parties, and also let them know what day a quorum may be expected to be present.

4. The Commission, when a quorum is present, will at any time or place take up, consider and dispose of any matters, *other than contested cases*, that may be brought before it or to its notice.

5. Any person, firm, association or corporation may complain to the Commission of any act done or omitted to be done by any person or corporation in violation of the laws creating and defining the powers and duties of the Commission; or of any acts or practices by

any person or corporation in violation of the laws relating to all railroads which the Commission is charged to see "are faithfully executed." Complaints and applications for hearing or relief, while technical pleading will not be required, must be made in writing signed by the complainant or his attorney, and must give the name of the party complained of, and also a brief statement of the facts claimed to constitute a violation of the law, or to entitle the applicant to the relief asked for. The Secretary will, upon request, advise any party as to the form of petition, application, answer or other paper necessary to be filed in any case, and furnish any information from the records of the Commission as will conduce to a full presentation and a speedy disposal of the matters in controversy.

6. All complaints, applications for hearings, or information, and all other papers relating thereto, and all communications, telegrams and inquiries concerning matters before or to be brought before the Commission should be delivered or mailed to the "Secretary, Railroad Commission", Frankfort, Kentucky. However, complaints and communications delivered or addressed to any member of the Commission at the place of his residence will be given prompt attention.

7. Applications for re-opening a case after it has been submitted, or for rehearing after it has been decided by the Commission, may be made within ten days thereafter by petition in writing duly verified, in which must be stated specifically the grounds upon which the application is based, and if for re-hearing, the finding of fact and conclusions of law claimed to be erroneous must also be specified. A copy of the petition must also be filed for the adverse party.

8. When such complaint or application shall be made, the Secretary shall file the same by placing his file mark thereon, with the proper number, and enter the same on the docket.

9. Before causing notice to be issued to the carrier or other party complained of as provided by law, the Commission may notify the party against whom complaint is made of the nature of such complaint and the party making the same, in order that the cause of the complaint may be removed or remedied without incurring the expense of a formal trial or hearing before the Commission. When notice shall be issued to such party to appear before the Commission at the place and time named in the notice to answer such complaint, the party so notified shall file answer and at least one copy thereof with the secretary of the Commission, not later than five days before

the time so fixed and the secretary shall at once forward said copy to complainant.

10. The secretary of the Commission will, when a complaint or complaints have been filed, make full copies of same for use of each member of the Commission and of the party complained of.

11. In entering the complaint upon the docket and in the answer thereto, the party making complaint shall be designated "plaintiff" and the party against whom complaint is made shall be designated "defendant." If the application be "*ex parte*", the case shall be so styled, with the name of the applicant.

12. The party or parties to any complaint or application and party complained of may appear before the Commission in person or by counsel.

13. Any member of the Commission will issue subpoenas for the attendance of witnesses whose testimony either party may desire at any investigation.

14. In all contested cases the plaintiff shall open and close, and the procedure before the Commission will be governed, as far as applicable, by the practice in the Circuit Courts of Kentucky.

15. These rules shall be printed and copies thereof furnished to all applicants.



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DOCKET, 1908-09

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ORDERS, 1909

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**DOCKET, 1908-09**

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Citizens of Campton vs. Mountain Central Ry. Co. Complaint relative to rates on merchandise to Campton. Dismissed.

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Broadhead-Garrett Co., vs. Mountain Central Ry. Co. Withdrawn.

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A. C. Bland, Uniontown, vs. Illinois Central Ry. Co. Relative to crossings in Uniontown. Order requiring defendant to repair crossings. Order complied with.

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Henderson Elevator Company vs. L. & N. Railroad Company. Relative to demurrage charges. Submitted, and order entered.

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Crescent Coal Company vs. L. & N. Railroad Company. Relative to switching charges in city of Henderson.

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Commercial Club of Georgetown, Ky. vs. C. N. O. & T. P. Ry. Co. Relative to depot facilities at Georgetown, Ky. Order requiring defendant to rebuild depot. Depot constructed.

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Kentucky & Ohio River Interurban R. R. Co. vs. Illinois Central R. R. Co. Relative to crossings of tracks in Paducah, Ky. Filed away, with leave to reinstate.

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Kentucky Supply Company vs. L. & N. R. R. Co., and C. N. O. & T. P. Ry. Co. Relative to rates on coal. Pending.

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Mayor of Madisonville vs. L. & N. R. R. Co. Relative to depot facilities. Pending.

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A. B. Peale & Son, Murray, Ky. vs. Illinois Central R. R. Co. Relative to freight rates. Pending.

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W. A. Samuels, *et al.*, Mt. Sterling, Ky. vs. C. & O. Railway Company. Relative to depot facilities at Mt. Sterling, Ky. Order requiring defendant to construct new depot. (Depot constructed).



Citizens of Heath, Ky. vs. Illinois Central Railroad Co. Depot facilities at Heath. Order entered favor complainants.

Citizens of Depoy, Ky. vs. Illinois Central Railroad Co. Dismissed January 6, 1909.

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Citizens of Delaplain, Ky. vs. Illinois Central R. R. Co. Request for agent at Delaplain. Pending.

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A. C. Jannin, Trustee, vs. Mammoth Cave R. R. Co. Pending.

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Louisville Veneer Mills Co. vs. L. & E. and L. & N. R. R. Cos. Dismissed.

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Quick's Run R. R. & Turnpike Co. vs. C. & O. Ry. Co. Relative to taxes. Settled.

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Citizens of Erlanger, Ky. vs. C. N. O. & T. P. Ry. Co. Relative to discontinuance of train service. Pending.

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Darwin A. Johnson vs. Louisville & Eastern Ry. Co. Request for erection of platform at Huston. Pending.

---

F. M. Hutchinson, Jr., vs. Illinois Central R. R. Co. Relative to establishment of electric bells at Owensboro. Order April 13, 1908, directing defendant to install and maintain electric bells at crossings designated in complaint.

---

Commercial Club of Paris vs. L. & N. and F. & C. R. R. Cos. Inadequate depot and terminal facilities. Pending.

---

Straight Creek Coal Mining Co. vs. Straight Creek Coal and Coke Co., and L. & N. Railroad Company. Adjustment of freight rates. Pending.

---

Louisville Board of Trade vs. Railroads in Kentucky. Order November 24, 1908, by Commission relieving railroads from operation of long and short haul clause, Kentucky Constitution.

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A. J. May, *et al.*, vs. C. & O. Railway Company. Depot facilities at Prestonsburg. Complaint dismissed.

Citizens of Hopkinsville, Ky. vs. L. & N. and I. C. Railroad Companies. Depot facilities. Settled.

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Keystone Mining & Mfg. Co. vs. L. & N R. R. Co. Switching rate at Henderson, Ky. Order entered favor of complainant.

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Citizens of Bardstown, Ky. vs. L. & N. Railroad Company. Depot facilities. Filed away.

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Citizens of Rothwell and Mt. Sterling vs. C. & O. Railway Company. Order entered March 3, 1909, changing train service.

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Citizens of Wilton, Ky. vs. L. & N. Railroad Company. Train service. Order entered requiring re-establishment of train service, March 3, 1909.

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L. L. Harris, Louisville, Ky. vs. L. & N. Railroad Co. Excessive passenger rate. Order dismissing. March 3, 1909.

---

Citizens of Lawrenceburg vs. Southern Railway Company in Kentucky. Pending.

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Campbell County vs. L. & N. Railroad Company. Assessment of Newport and Cincinnati Bridge, year 1908. Dismissed.

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Citizens of Wingo, vs. Illinois Central R. R. Co. Dismissed.

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M. S. Crane, Jackson, Ky. vs. Lexington & Eastern Ry. Co. Freight rates. Dismissed with leave to reinstate.

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Citizens of Morehead vs. C. & O. Ry. Co. Depot facilities. Complaint dismissed. New depot now in course of construction.

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Ashland Leather Co. vs. C. & O. Ry. Co. and L. & N. R. R. Co. Rate on leather, carloads, Ashland to Frankfort, via Lexington, Ky. Order reducing rate from 34 cents per hundred to 26 cents per hundred.

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Jonas Weil vs. L. & N. Railroad Company. Cattle rates, Kentucky points. Dismissed settled.

C. K. Augustus vs. L. & N. R. R. Co. Depot steps at South Park. Dismissed settled.

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Richardson Coal Co. vs. L. & N. Railroad Company. Freight rates. Dismissed settled.

---

Kentucky Board of Agriculture vs. Kentucky & Indiana Bridge Company. Switching rates. Dismissed settled..

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J. H. Graves, Jr., Chilesburg, Ky. vs. C. & O. Ry. Co. Rate on live turkeys. Referred to Rate Clerk, and settled.

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W. G. Howard, *et al.*, vs. C. & O. Railway Co., and L. & N. R. R. Co. Inadequate depot facilities. Pending.

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Jno. H. McCoy, Sample, Ky. vs. L., H. & St. L. Ry. Co. Inadequate depot facilities. Pending.

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G. M. Lyons, Valley View, Ky. vs. L. & N. R. R. Co. Rates on coal. Dismissed.

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## ORDERS, 1909

### ORDER No. 1.

January 11, 1909.

"This day came the Kentucky Valley Railroad Company and filed copy of its amended articles of incorporation as required by Section 764, of the Kentucky Statutes."

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### ORDER No. 2.

February 3, 1909.

"Being regular day set apart for meeting of Kentucky Railroad Commission, and no quorum present, the same was adjourned to meet in Louisville, at Galt House, February 5, 1909, as per call of Chairman A. T. Siler."

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### ORDER No. 3.

February 5, 1909.

Blue Grass Traction Co., vs. Cincinnati, New Orleans & Texas Pacific Railway Co.

## ORDER No. 4.

February 13, 1909.

"Came the Chesapeake & Ohio Railway Co., and filed duplicate original of the General Funding and Improvement Mortgage to United States Mortgage and Trust Co., and William H. White, as Trustees, dated January 2nd, 1909, and executed February 11, 1909."

## ORDER No. 5.

February, 1909.

Ohio Valley Tie Co., vs. Ohio & Kentucky Railway Co., Lexington & Eastern Railway Co., C. N. O. & T. P. R'y Co., and Frankfort & Cincinnati R'y. Co.

## ORDER No. 6.

March 3, 1909.

Henderson Elevator Co. vs. L. & N. R. R. Co.

## ORDER No. 7.

March 3, 1909.

This being regular day set apart for meeting of the Kentucky Railroad Commission, viz: first Wednesday in each month. Present, Chairman A. T. Siler, and Commissioners L. P. Tarlton and McD. Ferguson.

## ORDER No. 8.

March, 3, 1909.

"In the matter of citizens of Heath, Kentucky, vs. Illinois Central Railroad Company, after hearing arguments by Superintendent A. H. Egan and Atilla Cox, Jr., for the defendant, the Illinois Central Railroad Company was directed by the Commission to erect and maintain a passenger and freight depot at Heath, the plans and specifications for which to be submitted to Commissioner Ferguson; and this case is now filed away."

## ORDER No. 9.

March, 3, 1909.

"In the matter of citizens of Bardstown Junction vs. L. & N. Railroad Company, the defendant purchased and opened to the public additional grounds adjacent to the Bardstown Junction freight depot,

thus complying with request of complainants, and this case is ordered dismissed, settled."

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ORDER No. 10.

March 3, 1909.

"In the matter of citizens of Rothwell, etc., vs. C. & O. Railway Co. After hearing discussion by E. P. Goodwin, and Superintendent Fox, for the defendant, the Commission advised that a change in train service on the Rothwell Branch of the Chesapeake & Ohio Railway Company be changed to more nearly suit the convenience of the traveling public, to which the railway company agreed, and this case is now dismissed."

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ORDER No. 11.

March 3, 1909.

"In the matter of citizens of Wilton vs. L. & N. R. R. Co., the defendant reported train service on Wilton Branch re-established, and this case is now dismissed."

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ORDER No. 12.

March 3, 1909.

"In the matter of L. L. Harris vs. L. & N. R. R. Co. After hearing argument of defendant the Commission ordered this complaint dismissed."

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ORDER No. 13.

March 3, 1909.

"In the matter of citizens of Wingo vs. Illinois Central Railroad Co. After hearing argument of Atilla Cox, Jr., for defendant, the Commission ordered this complaint dismissed."

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ORDER No. 14.

March 12, 1909.

"This day came the Cumberland Northern Railway Company and filed copy of its Articles of Incorporation as required by Section 764, of the Kentucky Statutes."

## ORDER No. 15.

State of Kentucky,  
Office of Railroad Commission.

"I, D. B. Cornett, Secretary of the Railroad Commission of the State of Kentucky, certify that a certified copy of the Articles of Incorporation of the Carolina, Clinchfield and Ohio Railway of Kentucky, and of the affidavit of two of its directors, showing compliance with Section 763 of the Kentucky Statutes, has this day been filed in the office of said Commission."

"Given under my hand as Secretary of the Railroad Commission of Kentucky this 17th day of March, 1909."

(Signed) \_\_\_\_\_ D. B. CORNETT, *Secretary*.

## ORDER No. 16.

April 12, 1909.

"This day came the Southern Pacific Railway Company and filed copy of its amended articles of incorporation increasing its capital stock, as required by Section 764, of the Kentucky Statutes."

## ORDER No. 17.

State of Kentucky,  
Office of Railroad Commission.

"I, D. B. Cornett, Secretary of the Railroad Commission of the State of Kentucky, certify that a certified copy of the Articles of Incorporation of the Cincinnati, Louisville, Lexington and Maysville Traction Co., and of the affidavit of two of its directors, showing compliance with Section 763 of the Kentucky Statutes, has this day been filed in the office of said Commission."

"Given under my hand as Secretary of the Railroad Commission of Kentucky this 12th day of April, 1909."

(Signed) \_\_\_\_\_ D. B. CORNETT, *Secretary*.

## ORDER No. 18.

May 5, 1909.

"This being regular day set apart for meeting of the Kentucky Railroad Commission, viz., first Wednesday in each month: Present, Chairman A. T. Siler and Commissioner L. P. Tarlton."

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ORDER No. 19.

May 5, 1909.

"Arguments were heard by W. A. Samuels for Complainant and Superintendent Fox, for defendant, in the matter of citizens of Rothwell vs. C. & O. Railway Co. The Commission after being advised refused to re-open this complaint, the same having been settled at March meeting."

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ORDER No. 20.

May 5, 1909.

"Complaint of Ashland Leather Co. vs. C. & O. Ry. Co. and L. & N. Railway Co., was next brought up and argued by Attorney P. K. Malin for complainant, and H. C. McLellen for L. & N. and W. F. Hite, Asst. General Freight Agent C. & O. Railway Co. Proof was taken and this case was continued to June for further argument and proof."

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ORDER No. 21.

May 5, 1909.

"In the matter of Jonas Weil and others vs. L. & N. R. R. Co. After lengthy discussion of the rates on stock cattle via L. & N. from Louisville to Lexington, and other points, the case was continued to the June meeting so as to permit complainants to revise and make more specific complaints."

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ORDER No. 21 1-2.

May 5, 1909.

"No further business being brought before the Commission, the same was adjourned to meet in Louisville, May 6, 1909."

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ORDER No. 22.

"Taylor Proctor, et al., vs. Southern Railway in Kentucky."

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ORDER No. 23.

May 28, 1909.

"This day came the Millers Creek Railroad Company and filed certified copy of its Articles of Incorporation and affidavit of John F. Hager and J. W. M. Stewart, in accordance with Section 763, Kentucky Statutes."

## ORDER No. 24.

June 1, 1909.

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"Pursuant to call of Chairman Siler, the Commission met at its office, Frankfort, Ky., in lieu of regular meeting, to-wit:—first Wednesday in June—June 2nd. Present, Chairman A. T. Siler, and Commissioners L. P. Tarlton and McD. Ferguson."

## ORDER No. 25.

June 1, 1909.

"Arguments were heard in the case of Keystone Mining & Mfg. Co. vs. L. & N. R. R., to-wit: Mr. T. L. Edelen for complainant, and Attorneys Moorman and Dearing for defendant, and case submitted."

## ORDER No. 26.

June 1, 1909.

"In the case of Ashland Leather Co. vs. C. & O. Railway Co., and L. & N. Railroad Co., proof was taken and case argued by Mr. P. K. Malin for complainant, and Mr. John T. Shelby for C. & O., and Mr. W. G. Dearing for L. & N. R. R. Co. and case submitted with leave to both sides to file briefs."

## ORDER No. 27.

Kentucky Wagon Works Co. vs. C. N. O. & T. P. Ry. Co., and Southern Railway Co. in Kentucky.

## ORDER No. 28.

State of Kentucky,

Office of Railroad Commission.

"I, D. B. Cornett, Secretary of the Railroad Commission of the State of Kentucky, hereby certify that a certified copy of the Articles of Incorporation of the Kentucky Electric Railway Company, and of the affidavit of two of its directors showing compliance with Section 763 of the Kentucky Statutes, has this day been filed in the office of said Commission.

"Witness my hand as Secretary aforesaid, this 16th day of June, 1909."

(Signed)

D. B. CORNETT, *Secretary*.



## ORDER No. 29.

(*Oath of Office, John P. Haswell, Jr., Railroad Commissioner.*)

"I, John P. Haswell, Jr., of Hardinsburg, Breckinridge County, Kentucky, do solemnly swear that I will support the Constitution of the United States, and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully discharge and execute, to the best of my ability, the office of RAILROAD COMMISSIONER FOR THE FIRST RAILROAD COMMISSIONER'S DISTRICT OF KENTUCKY, according to law; and I do further solemnly swear that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, SO HELP ME GOD!

(Signed)

JOHN P. HASWELL, JR.

"Subscribed and sworn to before me by John P. Haswell, Jr., this 24th day of June, 1909."

(Signed)

NAPIER ADAMS,

*Clerk Court of Appeals, Kentucky.*

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ORDER No. 30.

August 2, 1909.

"This day came Miller's Creek Railway Company and filed amendatory Articles of Incorporation thereof changing the name of said railway company to "Paintsville & Rockcastle Railway Co.," in compliance with Section 763 of Kentucky Statutes."

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ORDER No. 31.

Mrs. James Callahan vs. Louisville & Interurban Railway Company.

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ORDER No. 32.

August 4, 1909.

Ashland Leather Co. vs. C. & O. Railway Co., and L. & N. Railroad Co.

## ORDER No. 33.

State of Kentucky,

Office of Railroad Commission.

"I, D. B. Cornett, Secretary of the Railroad Commission of the State of Kentucky, hereby certify that a certified copy of the Articles of Incorporation of the Cynthiana and Paris Railway Co., and of the affidavit of two of its directors, showing compliance with Section 763 of the Kentucky Statutes, has this day been filed in the office of said Commission."

"Witness my hand as Secretary aforesaid, this 16th day of September, 1909."

(Signed)

D. B. CORNETT, *Secretary*.

## ORDER No. 34.

October 6, 1909.

Being regular day set apart for meeting of the Kentucky Railroad Commission, viz., the first Wednesday in each month. Present, Chairman A. T. Siler, and Commissioners L. P. Tarlton and John P. Haswell, Jr.

## ORDER No. 35.

October 6, 1909.

Further arguments were heard in case of citizens of Prestonsburg and Floyd County vs. C. & O. Railway Co., as follows: For defendant, Attorneys W. S. Harkins and W. D. Cochran and G. B. Wall. The case was then submitted, and the hereinafter entered order (No. 38), entered, said order being agreed on by the Commission."

## ORDER No. 36.

October 6, 1909.

"In the matter of citizens of Hopkinsville against the L. & N. Railroad Co., and the I. C. R. R. Co., the following letter from complainants was received and read, and ordered spread on order book:

"Hopkinsville, Ky., September 28, 1909.

"The Railroad Commission,

Frankfort, Ky.

Gentlemen:

We received yours 6th inst., fixing Oct. 6, 09, as the date upon

which you would give our committee a hearing as to conditions at Hopkinsville, Ky.

We wish to thank you for your promptness in this matter, and we are glad to say to you that our matters have been satisfactorily adjusted by extensive improvements, which are now being made by both the Louisville & Nashville Railroad Co., and the Illinois Central Railroad Co. You will therefore cancel the date fixed.

Thanking you, we are,

Most respectfully,

(Signed) E. H. HIGGINS, *Special Committee.*

(Signed) LUCIEN H. DAVIS,

Whereupon this case is now ordered dismissed, settled."

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ORDER No. 37.

State of Kentucky,

Office of The Railroad Commission.

"I, D. B. Cornett, Secretary of the Railroad Commission of the State of Kentucky, hereby certify that a certified copy of the Articles of Incorporation of Ohio, Kentucky and Atlantic Railroad Company, a Delaware Corporation, has this day been filed in the office of said Commission.

"Witness my hand as Secretary aforesaid, this 22nd day of October, 1909."

(Signed) D. B. CORNETT, *Secretary.*

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ORDER No. 38.

A. J. MAY, COUNTY ATTORNEY FLOYD COUNTY, ET AL., *Complainants,*  
*vs.*

CHESAPEAKE & OHIO RAILWAY CO., *Defendants.*

This case having come on for hearing and trial, and the Commission having fully investigated the same by taking and hearing proof, both oral and verbal, and having gone on the ground at Prestonsburg to examine and investigate the situation, and the Commission having been legally advised in this case by James Breathitt, Attorney General for Kentucky, is of the opinion that complainants are not entitled to the relief requested.

It is therefore ordered that this complaint be and same is now hereby dismissed.

This October 6th, 1909."

## ORDER No. 39.

November 11, 1909.

"This day came the Kentucky & Indiana Bridge and Railroad Company and filed copy of its amended Articles of Incorporation, in compliance with Section 763 of the Kentucky Statutes."

## ORDER No. 40.

November 11, 1909.

"This day came the Covington and Big Bone Railway Co., and filed certified copy of its Articles of Incorporation, together with copy of affidavit of M. J. Crouch and Joseph Feltman, showing compliance with Section 763 of the Kentucky Statutes."

## ORDER No. 41.

December 1, 1909.

*(Oath of Office, Laurence B. Finn, R. R. Commissioner.)*

"I, Laurence B. Finn, of Franklin, Simpson County, Kentucky, do solemnly swear that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully discharge and execute to the best of my ability the office of RAILROAD COMMISSIONER for First Railroad Commissioner's District of Kentucky, according to law; and I do further solemnly swear that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

(Signed)

LAURENCE B. FINN.

"Subscribed and sworn to before me by Laurence B. Finn, this the first day of December, 1909, at Frankfort, Kentucky.

(Signed)

NAPIER ADAMS,

*Clerk Court of Appeals of Kentucky.*

## ORDER No. 42.

Keystone Mining & Mfg. Co. vs. Louisville & Nashville Railroad Company.



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# Proceedings of Important Complaints

1909

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## RATE ON LEATHER

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ASHLAND LEATHER Co.,

*vs.*

CHESAPEAKE & OHIO RY. CO. AND L. & N. R. R. Co.

Complaint filed February 27th, seeking a reduction in rate on leather, carloads, Ashland, Kentucky, to Frankfort, Kentucky, via the Chesapeake & Ohio Railway Company's line from Ashland to Lexington, and Louisville & Nashville Railroad Company's line from Lexington to Frankfort. Proctor K. Malin, attorney for complainant and Jno. T. Shelby and W. G. Dearing for respondents.

1. "The facts as shown are that the distance from Ashland, Ky., to Frankfort, Ky., is 152 miles over the railroads owned by these defendants, and 34c per cwt. is charged and received for hauling leather in carload lots from Ashland to Frankfort, while the same can be, and is, hauled from Ashland via Newport, Ky., and Louisville, Ky., a much greater distance, for 30c per cwt. It is also shown that a rate of 13c per cwt. on leather exists between Ashland and Newport, a distance of 144 miles, while under the present arrangements the rate between Ashland and Lexington, a distance of 124 miles, is 21c per cwt."

2. "The rate of 21c per cwt., from Ashland to Lexington, a distance of 124 miles, and the rate of 13c per cwt. from Lexington to Frankfort goes to make up the full rate of 34c per cwt. This is called a combination rate—Held,

3. "That taking into consideration the distance between Ashland and Frankfort, the elevation in the road and the cost of its construction, as well as the general lay of the country between these two points over which these two roads run, and comparing the rates charged with the rates charged between points similarly situated in other parts of the country and on these same roads, and taking into consideration many other material points which enter into the making up of a reasonable rate, the Commission is of the opinion that 26c per cwt. is in and



of itself a reasonable rate to be charged for hauling leather in carload lots from Ashland, Ky., to Frankfort, Ky. Further held,

4. "That the Commission is of the opinion that 16c per cwt. is and of itself a reasonable rate to be charged for hauling leather in carload lots from Ashland, Ky., to Lexington, Ky., and that 10c per cwt., is and of itself a reasonable rate to be charged for hauling leather from Lexington, Ky., to Frankfort, Ky." Ordered,

5. "That for the transportation of leather from Ashland, Ky., to Frankfort, Ky., over lines of Chesapeake & Ohio and L. & N. R. R., there shall not be charged, collected or received by said two railroad companies, jointly or separately, for the transportation of such leather any rate in excess of 26c per cwt." And that for the transportation of leather from Ashland, Ky., to Lexington, Ky., over the defendant's line, Chesapeake & Ohio Railway Company, there shall not be charged, collected or received by said railroad company, for the transportation of such leather any rate in excess of 16c per cwt., in carload lots." That for the transportation of leather from Lexington, Ky., to Frankfort, Ky., over the line of the Louisville & Nashville Railroad Company's railroad there shall not be charged, collected or received, for the transportation of leather any rate in excess of 10c per cwt. in carload lots."

Case was called for hearing at Frankfort, Kentucky, May 5, 1909, resulting in the following proceedings:

Chairman Siler: We are now ready to hear the case of the Ashland Leather Company vs. the Chesapeake & Ohio Railway Company and the Louisville & Nashville Railroad Company. What have you to say, gentlemen.

Mr. Shelby: I desire to file a formal answer for the C. & O. Railway Company.

Siler: Very well, let it be filed.

Mr. Malin, for complainant: Mr. Chairman, this is a complaint of the Ashland Leather Company upon the freight rate on leather from Ashland to Frankfort, Kentucky. The Ashland Leather Co. operates a tannery at Ashland and sells quite a large amount of leather here at the Frankfort penitentiary. The rate from Ashland to Frankfort is 34 cents. This rate we are seeking to have changed. There are two grounds set out in our complaint, one is that the rate is unjust and excessive, the other is that they are charging more for a short

haul than for a longer haul. Realizing that the Railroad Commission would have the right to grant relief on that point, we present it as well as complaint as to the unjustness of the rate.

As I said, the rate from Ashland to Frankfort is 34 cents. Now by simply comparing other rates, this one seems to me to be unjust. From Ashland to Louisville the rate is only 18 cents, which is just a little more than one-half the rate from Ashland to Frankfort.

Chairman Siler: Do you mean the rate on leather?

Mr. Malin: Yes, sir, and in carloads it is 13 cents.

Mr. Malin: And from Ashland to Newport it is only ten cents, for a distance of 145 miles. From Lexington to Frankfort the rate is 13 cents. From Ashland to Chicago it is only 21 cents. We have here a list of freight rates from and to different points all over the country, and from those points to Frankfort, and we desire to file it with this Commission, and ask for an inspection of same in taking into consideration this rate complained of. From Cincinnati to Frankfort, which is 107 miles the rate is 17 cents, and from Kenosha, Wis., a distance of 442 miles, the rate is 34 cents, just the same as from Ashland to Frankfort, a distance of only 156 miles. From Chicago to Frankfort the rate is 31 cents.

Chairman Siler: What is the distance?

Mr. Malin: 391 miles.

Mr. Malin: From Grand Rapids, Michigan, to Frankfort the rate is 33 cents for 515 miles. From Columbus, Indiana, to Frankfort for a distance of 232 miles is 26½ cents. From Corry, Pa., a point with which we come in competition because it is a tanning point and they sell leather here, they have a rate of 31 cents, and the distance is 505 miles. From Pine Grove, Pa., a distance of 991 miles, the rate is only 43 cents. From Columbus, Indiana, a distance of 372 miles the rate is 24 cents.

Mr. McLellen: Are you not mistaken about that distance. I think the distance is much shorter than that.

Mr. Malin: What is the exact distance?

Mr. McLellen: Approximately 135 miles, I am quite sure.

Mr. Malin: I am perfectly willing that these distances be corrected. Of course they are subject to correction.

Mr. Malin: Now, here is a list of twenty-five or thirty rates where the distance is almost double and they are charging a less rate than we get for a distance of only 150 miles. As I understand it, the

position taken by the railroad company is that this is not a through rate, but that their local rate applies. The local rate from Ashland to Lexington is 21 cents, and from Lexington to Frankfort 13 cents. Assuming just for a moment that the local should apply, and comparing them—I would compare the local from Ashland to Lexington, 125 miles with the local from Ashland to Newport. Now the local from Ashland to Lexington for 125 miles distance, is 21 cents. From Ashland to Newport, 145 miles, it is 13 cents. They publish a rate from Riverton to Cincinnati. Riverton is a point on the Cincinnati Division, 130 miles from Cincinnati, and the local rate is 11 cents. Our contention is that not only the locals are excessive, but that the through rate should be applied from Ashland to Frankfort. That this case occupies the same position as the Coal Company case in 1906, in the complaint of the Adkins Coal Co., versus A. C. & I., and the C. & O., and in which I had the honor to appear for the A. C. & I. Company. There the A. C. & I. was applying its locals on coal from named points to its terminals; then the C. & O. was applying its locals from the terminals of the A. C. & I. to points on its line, and a complaint was made to this Commission. The railroad companies contended that their locals should apply, and this Commission held that a through rate should be applied from points on the line of the A. C. & I., and I want to read a little extract in that finding; which will be found on page 87 of the 1906 Annual Report of this Commission:

“It appears that the Chesapeake & Ohio Railway System, after entering the State of Kentucky, at Ashland, in running on to Louisville, is made up in part of about twenty-two miles of railroad owned by the Ashland Coal & Iron Railway Company, extending from Ashland to Denton. There it intersects with and forms a continuous line with the railroad of the Chesapeake & Ohio Railway Company, running from Denton to Lexington, Kentucky, over what is known as the Elizabethtown, Lexington and Big Sandy Railway. At Lexington, Ky., it continues on to Louisville, Ky., over the line of the Louisville & Nashville Railroad Company, the line of the latter company being leased to the Chesapeake & Ohio Railway Company for a certain period for which it pays the sum of \$5,000 per month, and obligates itself to pay a certain proportion of the cost of keeping the road bed in repair. By the terms of its contract with the Louisville & Nashville Rail-

road Company, the Chesapeake & Ohio Railway Company is not allowed to do any local business. The contract of this latter company with the Ashland Coal & Iron Railroad Company is analogous to that with the Louisville & Nashville Railroad Company, except as to the sum to be paid per month as rental, and as to the time of the life of the lease. By the terms of these two leases, each road is given a certain joint interest in the use of the property, and for the purpose of rate-making under the limitations of these leases, and in so far as the service it has a right to perform is concerned, is nothing more nor less than one continuous line and one system of railroad."

Mr. Malin: As stated, this Commission established through rates from named points on the A. C. & I. to points on the C. & O. Railway, on that principle; and our position is that the same principle should apply here; that a through rate, and a reasonable one should be established to enable our industry in the manufacture of leather to ship its product here to Frankfort.

Commissioner Tarlton: Have you the local there from Louisville to Frankfort?

Mr. Malin: Yes, sir, it is 13 cents for 62 miles.

Commissioner Siler: What has the defendant to say in this case.

Mr. McLellen, for defendant: May it please the Commission, in the absence of our General Attorney, Mr. Dearing, I was requested to appear before the Commission to-day, and to state briefly our part in this contention. The facts are that there is a rate of 34 cents in existence from Ashland to Frankfort, on leather in carload lots, not otherwise specified. This rate is a combination rate, which is made up of a rate of 21 cents from Ashland to Lexington, by way of C. & O., and a rate of 13 cents from Lexington to Frankfort, via L. & N. Now we contend that our rate of 13 cents from Lexington to Frankfort is not extortionate and unreasonable. As I have said, it is a part of this combination rate of 34 cents, which the C. & O. charges for transporting leather in carload lots from Ashland to Frankfort. The attorney for the complainant has stated that this rate of 34 cents when compared with the rate of 18 cents, which is the rate on leather, carload lots, from Ashland to Louisville, is unreasonable. Now we shall show that an eighteen cent rate in connection with the C. & O. is controlled by river traffic conditions, and that the conditions are dissimilar. We shall also show that Frankfort is not an intermediate point when com-

pared with Louisville, because there is a rate in effect at present of 30 cents per hundred on leather in carload lots from Ashland to Frankfort, via Cincinnati. Therefore, we are not charging higher rate, because leather could be shipped via Cincinnati and then to LaGrange over our main line, and Frankfort would not then be an intermediate point. Now, another point we shall establish is that the rate in effect to Frankfort is not a joint rate. It is what is known as a combination rate made up of local rates of 21 and 13 cents.

We contend that this Commission has not authority to establish joint rates, as has been held; and we shall also contend that our rate of 13 cents is reasonable, from Lexington to Frankfort.

Now as to why the C. & O. does not route shipments of leather via Newport, and on which a rate of 30 cents applies, we shall not defend, that being their part of it.

Now I am directed by our General Attorney to ask this Commission that they set a day on which we can introduce our witnesses, which are not present to-day. We do not wish to interfere in any way with the arrangements of the attorneys on the other side in this case, and if they wish to go ahead with their proof to-day, we will offer no objection to it provided they allow us to cross-examine their witnesses. The C. & O. is represented by Mr. Shelby who will handle their part of it.

Mr. Shelby: I would like to ask the gentleman, Mr. Malin, if he gave in his list of rates while ago, the distance from Columbus, Indiana, to Frankfort, as 271 miles.

Mr. McLellen: That is entirely incorrect. It is approximately 135 miles.

Mr. Malin: We propose to file this statement subject to any corrections they may desire to make in regard to distance.

Chairman Siler: Gentlemen, what has the C. & O. to say in this matter?

Mr. Hite, for the C. & O.: Mr. Shelby asked me to make a statement for the C. & O. The C. & O. thinks the rate to Frankfort is fair and equal, and gives the Ashland shipper equal opportunity to secure business in Frankfort as it gives to his competitors. We shall take the position that if this rate is reduced it would not benefit Ashland people only momentarily because complaints on other points on L. & N., by "Plants" located on L. & N. points would be made, asking for reduction in their rate. Therefore the L. & N. would

necessarily desire to put those "plants" on equality with their competitors, and necessarily would reduce the rate. Therefore, the same condition would exist as between these competitors, as exists to-day. Mr. Malin speaks of a rate in effect via Newport, which rate is 30 cents. I have asked Mr. Shaut why he does not use that thirty cent rate, and he stated that he could not make as good time as by coming direct via Lexington. We certainly can make better time than the competitive he mentioned from Corry, Pa., if the distance is 900 miles. Then the rate we carry on the Cincinnati Division is based on river competition. Also I think we should be permitted to charge a higher rate over the Lexington Division from the fact that we are at a greater expense than we are on the Cincinnati Division where we have river competition to meet with. Now as to the 18 cent rate from Ashland to Louisville, we haul that in our own trains, and that also is a competitive point with the river, and we use that local to Louisville, as a combination with the 13 cent rate from Lexington to Frankfort which makes a 31 cent rate to Louisville. Now as to the complaint made to distance, and then comparing the rates. When you come to the method of making rates, the longer you go the less the rate. If you increased the rate by the distance, you would soon have a rate that no one could use; therefore, as the distance increases the percentage of rate decreases, so when you would come to San Francisco, and take the rate applying from there to New York you would have a rate that would apply all over this country. Now Mr. Malin speaks of the coal rate. I do not think it is analagous to this case. That coal complaint was based on the fact that coal operators on the C. & O. were shut out of business because they had a higher rate on the Big Sandy and Kanawha Districts, and wanted to put these people on an equality with their competitors. The Commission then thought it wise to make that change. It does not do any good, from my short experience, to reduce a rate from a given point to a given point, where there are competitors for that point. It simply results in lowering the rate.

Chairman Siler: This case which Mr. Malin presents here is an unusual state of facts. I do not understand how you benefit by that rate you have via Newport.

Mr. Hite: That rate comes as a class rate account competition we have with the river. That was thoroughly gone over with by the Commission some years ago, and it was clearly understood why our rates on the river were so low.

Chairman Siler: Then this rate of 34 cents from Ashland to Frankfort does not do you any good nor the Ashland Leather Company any good either, does it?

Mr. Hite: It does not, but we have no objection to the 30 cent rate being used. That is why we publish it.

Mr. Malin: We insist also, that the 30 cent rate is excessive as compared with these other rates.

Mr. Hite: We state that we do not think it excessive from Ashland to Frankfort or to Newport, compared with the competitive conditions that prevail at Frankfort.

Mr. Malin: I don't think it matters what reduction other places might demand, but the question is whether or not this rate is just or unjust. Other points might make a complaint and might be entitled to it. That in no way touches this question. Now I don't think it matters about other complaints; and in this rate of 18 cents to Louisville they haul the same freight over the same road and in the same cars and it is no more expensive. I think the justness or unjustness of the rate depends upon the cost of handling freight. We have a right to admit that they are not going to carry freight from Ashland to Newport at a loss, and if they publish a rate of 13 cents they are making money on it. I don't see any difference between our position and that of the coal operators. They were operating mines on the A. C. & I. Railway and the rate was high. We are operating a tannery and seeking to get our product in here upon the line of the L. & N. at a just and fair rate.

Mr. Shelby: You do not contend that the rate to a place like Frankfort should be fixed to compare with the rate to Louisville?

Mr. Malin: No, sir, not because the rate to Louisville is only eighteen cents, because there are matters that enter into the handling of traffic, but we do contend that the distance to Frankfort does not justify this rate.

Mr. Hite: I would like to ask Mr. Shaut if a reduction in this rate would increase his business. If a reduction were given other manufacturers, would you not have the same conditions?

Mr. Shaut: No, sir, I think a reduction in the rate would increase our business at Frankfort, because we have to meet competition from tanneries outside this State, for instance, Corry, Pa., and Kenosha, Wis., which is only a short haul from Chicago and at a

very low rate, and we come in direct competition with those tanneries. We have to seek this market for our output.

Mr. Malin: Seems as though it would not only be a question of increase in a man's business, but whether in the conduct of his business he is entitled to have a fair and just rate on a commodity.

Mr. Hite: We take the position that it is a just rate; that it is not higher than anybody's work for the same business. I do not think the Commission wants to take the position of reducing rates simply because a shipper says it is too high.

Chairman Siler: Here, though, Mr. Malin backs up his position with a statement that is very striking.

Mr. Hite: Seems as though the Chicago people are the ones that are making this complaint.

Chairman Siler: So far as this Commission is concerned it is this Company here making the complaint.

Mr. Hite: Our correspondence originated with Swift & Co. about this rate.

Chairman Siler: You admit, do you Mr. Hite, the truth of the statement relative to those comparisons made?.

Mr. Hite: I have not examined them.

Chairman Siler: Are you prepared to introduce witnesses here to testify as to the correctness of them?

Mr. McLellen: We do not think the combination basis employed in constructing the rate from Ashland to Frankfort is wrong, because it is exactly the same as is employed generally throughout the country where through rates are in effect. Our rate from Lexington to Frankfort is constructed in the same manner as the rate from Louisville to Cincinnati, and our other combinations to Frankfort; that there is no reason for reducing the rate from Lexington to Frankfort that would not apply with equal force with rates from other junctions; that a reduction in the rate from Lexington to Frankfort would be followed by corresponding reductions from other junction points, and therefore, not in the relation to the rates—especially Ashland on the one hand and competing shipping points on the other, would the rates be changed.

Chairman Siler: How do you defend your rate from Ashland here, and then your rate for a distance of 65 miles?

Mr. McLellen: Because that is the rate that was established in our basing point system from other junctions. That is what we also want the Commission to take into consideration. We admit the force



of the argument of complainant, and upon which question is made by your Honor, but we also ask that you consider this basing point on which our rate is established from other junction points.

Mr. Malin: You do not mean that this is a minimum rate?

Mr. McLellen: It is about a minimum when compared with other services under similar conditions. We also contend that this reduction would be utterly useless.

Chairman Siler: Now lets see about that. The consumer as well as the shipper would undoubtedly get the benefit of it, and it would not be useless reduction.

Mr. McLellen: But, your Honor, the bulk of the business is moved freely upon this rate, which your Commission and the Interstate Commerce Commission have held is a criterion to go by as to the fairness and reasonableness of a rate.

Chairman Siler: You might also take into consideration the fact that there is river competition here, and this would also fall in the favor of river competition.

Mr. McLellen: There is also competition with the F. & C., and this is also taken into consideration in making our rate for this traffic as compared with making other rates for that traffic. The river facilities here at Frankfort are not potent for the reason that the river is not navigable for all classes of traffic at all seasons of the year.

Mr. Malin: I want to say with reference to that that we are entirely willing to submit these rates with both the officials of the L. & N., and the C. & O.

Chairman Siler: Have you any proof to offer in this case? A suggestion was made by the L. & N., that they would like to offer proof. We would like to have all the proof the same day.

Commissioner Tarlton: What do they want to offer proof on?

Chairman Siler: I do not believe we can conclude this case today. There are some of these rates Mr. Shaut cannot verify.

McLellen: I fully realize the conditions under which the complainants are situated, and I too am in favor of a speedy settlement of this matter as far as our Company is concerned. Just as the complainant's witnesses are unable to verify these rates so we are unable to do so. I cannot verify all the rates and I would like to have them verified by our traffic managers.

Mr. Malin: I suggest that we submit these rates to both sides and let them verify them.

Mr. Shelby: I don't know whether we can do that or not.

Mr. Malin: I mean to the traffic department.

Commissioner Tarlton: Gentlemen, it looks to me like that under the recent ruling of the Supreme Court each rate there has to be a separate question. I don't see why in this case we are not bound by the tariffs in Kentucky. They are on file here in this office, and I can't see what can be gained by introducing proof as the sole question in the case is whether or not the rate of 21 cents from Ashland to Lexington and then the rate of 13 cents from Lexington to Frankfort is unjust in comparing them with our rates in Kentucky, and I don't see any use in our going behind that.

Mr. Malin: We feel that the Kentucky rates are sufficient.

Mr. Malin: We desire to offer Mr. Shaut.

Whereupon Mr. T. J. Shaut was properly sworn by Chairman Siler, and testified as follows:

Examined by Mr. Malin:—

Q. Mr. Shaut, what is your business?

A. I am in the leather business.

Q. How, and in what way?

A. In the manufacture of sole leather.

Q. What Company are you connected with?

A. Ashland Leather Company.

Q. What position do you occupy with that Company?

A. President.

Q. How long?

A. Five years.

Q. Where is its tannery located?

A. Ashland, Ky.

Q. How long has it been operating there?

A. Twelve years.

Q. Does the Ashland Leather Company sell any leather in Frankfort?

A. They do.

Q. In car load lots?

A. Yes, sir.

Q. Large, or small quantities?

A. Large.

Q. Say whether or not you have recently made a sale?

A. Yes, sir, within three weeks.

Q. How many car loads?

A. Ten.

Q. What is the rate charged from Ashland to Frankfort via C. & O., and L. & N., via Lexington?

A. Thirty-four cents.

Q. What is the rate charged to Frankfort from Ashland via Newport?

A. Thirty cents.

Q. What is the rate from Ashland to Louisville on leather?

A. Eighteen cents.

Q. Is that via C. & O., and L. & N?

A. Yes, sir.

Q. What is the rate from Ashland to Newport?

A. Thirteen cents.

Q. What is the distance?

A. 142 or 144 miles. I believe we counted it as 144.

Q. What is the rate charged from Ashland to Lexington over the C. & O?

A. 18 cents.

Q. What is that distance?

A. 125 miles.

Q. I hand you this sheet of rates, and will ask you to state whether or not this gives, so far as you know, a statement of the rates on leather from different points to Frankfort, Ky?

Mr. Shelby: That is not the proper way to prove that.

Mr. Malin: I admit that.

Commissioner Tarlton: That makes no difference here.

Mr. Shelby: Does the Commission not think that those rates as given there are inadmissible?

Chairman Siler: I think as a comparison they are admissible.

Mr. Malin:

Q. Do you ship leather from Ashland to Chicago?

A. Yes, sir.

Q. What is the rate?

A. 21 cents.

Q. What other points do you ship to?

Interrupted by Chairman Siler:

Q. What is the distance from Ashland to Chicago?

A. 446 miles.

Mr. Malin: I believe that is all the rates the witness can testify to.

Chairman Siler: Is Frankfort a river point?

Mr. Shaut: I understand it is.

Mr. Malin:

Q. Do you know whether or not leather is shipped by river, or by rail?

A. Very little by river.

Q. Say whether or not the question of river competition affects the rate on leather?

A. I do not think it does.

Chairman Siler:

Q. Does it to Covington or Newport?

A. I would say it does.

Q. But not to Louisville?

A. I would say not.

Q. How much leather do you ship to Frankfort annually?

A. I have a list here.

Mr. Malin:

Q. Have a statement of the amount of leather you shipped to Frankfort within the last year?

A. Yes, sir.

Q. Will you file that as a part of your testimony?

A. Yes, sir.

Chairman Siler: How much is it?

A. Twenty-three car loads.

Q. About how much to the car?

A. About thirty thousand pounds.

Q. (By Mr. Malin): Is there any material effect on leather by reason of river competition to Cincinnati?

A. I do not think there is any whatever.

Mr. Shelby:

Q. Do you say no leather is shipped by water?

A. Some. We ship very little by water.

Q. If you could get a lower rate by water, then wouldn't you ship it by water?

A. Not in car load lots.

Q. Now suppose you could get a lower rate into Cincinnati, as an illustration, say from Ashland you could get a seven or eight cent

rate by water by carload lots, and by rail it would cost you eleven or twelve cents, would you adopt water transportation?

A. Boats don't carry by car load lots.

Q. I understand that, but suppose you were able to save money on shipments by boat; would you do it?

A. Not unless the rates justified it.

Q. Well, if it was low enough to make it more profitable?

A. I think so, yes, sir. Think I would.

Q. The reason why it is easier for a plant situated as yours is, to ship by rail is that you have side tracks right by your door, and you can load by carloads; but if you had a rate by water sufficient to overcome that, then you would avail yourself of water transportation?

A. Yes, sir.

Q. What would be the difference—Now taking all these matters into consideration, is it not just a question of which is the most profitable.

A. All depends on the distance to river, etc.

Q. But if it were more profitable by river you would ship that way?

A. Yes, sir.

Chairman: What have you to say further, gentlemen?

Mr. Hite: I have a letter here from Swift & Co.

Chairman Siler: You may read it.

Whereupon Mr. Hite read letter.

Chairman Siler: Do wish to introduce it?

Mr. Hite: No, I do not believe we care to.

Mr. Shelby: I do not know anything about that. What has Swift & Co., to do with the case?

Mr. Siler: How does that effect this case?

Mr. Hite: Well, all of our correspondence about it originated with Swift & Co.

Mr. Shelby: What I want to know is what Swift & Co., had to do with this complaint?

Mr. Hite: I suppose they are interested in this plant.

Mr. Malin: They own a part interest in the Ashland Leather Company.

Commissioner Tarlton: The controlling interest?

A. No, sir.

Mr. Shelby: I am curious to know how this complaint originated with Swift & Co.

Mr. Shaut: I took it up with them because I thought their Traffic Manager would have some influence in getting a rate.

Mr. McLellen: If it pleases, your honor, we would like to have a date set for further hearing of testimony in this matter.

Commissioner Tarlton: What testimony? What further testimony do you want to offer. You admit this is all under the Kentucky tariffs.

Mr. McLellen: We have a statement which will have to be compiled by our Traffic Manager.

Mr. Shelby: This question of rate making is a very intricate thing, and should be gone into thoroughly, etc., etc.

Whereupon motion was made that the case be postponed, and by agreement it was ordered that the further taking of testimony would be taken up at the Commission's June meeting.

#### FINAL PROCEEDINGS.

This case having been continued from May meeting, the following proceedings were had at the Commission's June meeting, Frankfort, Kentucky, June 1, 1909:

Chairman Siler: Gentlemen, we are now ready to take up the complaint of Ashland Leather Company. What have you to say?

Mr. Shelby: Mr. Chairman, I desire to file an amended answer setting out a little more specifically the relation of the two railroads relative to these rates.

Mr. Malin: May it be traversed, Mr. Chairman?

Mr. Shelby: I do not think it is anything that you will want to traverse.

Mr. Shelby: When the Commission met several weeks ago to consider this matter I had suddenly been called into this case and knew nothing as to the facts, and never saw a copy of the complaint until down here that morning, and had not familiarized myself with the facts as to the question involved, and I thought it possible, that in view of these facts, the Commission might allow us to again state the case, that is, lay before the Commission our position as to the facts involved, and also as to the questions of law that might control the Commission upon consideration of those facts. I do not want to trespass upon the time of the Commission unless they will indulge—

Interrupted by Chairman Siler: Go ahead.

Mr. Malin: I will ask permission to reply.

Chairman Siler: Very well.

Mr. Shelby: The Commission will note that this is a complaint against these two defendants, jointly, on account of alleged excessive and extortionate through leather rate from Ashland to Frankfort. In point of fact, there is no through rate on leather from Ashland to Frankfort, via Lexington. The C. & O. Railway Company has certain running or trackage rights over the line of the L. & N. Railroad from Lexington to Louisville. This is regulated by a contract between the two companies, and in that contract it is provided that the C. & O. has no right to any freight business at any intermediate point between Lexington and Louisville. Now Frankfort is such an intermediate point. The C. & O. does not either make deliveries of freight at Frankfort, or receive freight there for transportation. Shipments made from Ashland over the C. & O. consigned to Frankfort can only come to Lexington over the C. & O., and then must be delivered to connecting carrier, the L. & N.—and there is no joint rate established between these two carriers, the C. & O. having its rate to Lexington and the L. & N. its rate from Lexington to Frankfort. Now the rate on shipments of this class from Ashland to Lexington is 21 cents, according to the classification filed. The rate of the L. & N. from Lexington to Frankfort is 13 cents, so that the aggregate, or the combination rate is 34 cents, as charged in the complaint, and there is no through rate from Ashland to Frankfort. There are two rates which in the aggregate amount to 34 cents, but no single rate. It is alleged in the complaint that a 34 cent rate is charged from Ashland to Frankfort. Now those are the facts in the case, and if the Commission follows the rules of pleading, there can be no relief granted upon this complaint. I do not know to what extent the Commission follows strictly the rules, but evidently if it does, there could not be any relief granted even though the facts justified.

I take it, however, that the Commission will consider this question for whatever there may be in it, and try the case upon its merits as one affecting the reasonableness of the rate these two companies charge to make up the combination.

Now I want to call the Commission's attention to the facts which will appear fully in the evidence, and which already appears in the evidence so far as it has been taken—That on shipments of leather

from Ashland to Frankfort over the lines of these two defendants there is a rate in the aggregate of 30 cents per hundred pounds when a shipment is carried by the way of Newport, and from Newport over the line of the L. & N. via Louisville and then to Frankfort. This rate is 30 cents. This is made up of the C. & O. rate of 13 cents from Ashland to Newport and of a rate of 4 cents from Newport to Louisville, and a rate of 13 cents from Louisville to Frankfort over the L. & N. In other words, of that 30 cent rate the C. & O. gets 13 cents when shipments go by the way of Newport, and the L. & N. gets 17 cents made up of the 4 cent rate from Newport to Louisville, and the 13 cent rate from Louisville to Frankfort, in other words in the proportion of 13 to 17. Now there are certain principles, it seems to me, that ought to control in the investigation of this question. The primary fact that we are confronted with at the beginning of the investigation is that the rate from Ashland to Frankfort over these lines, the C. & O., and the L. & N., is not 34 cents, even if you look at it as a joint rate. It is 30 cents, because there is a rate of 30 cents coming by the way of Newport, to Frankfort that is not attacked in this complaint, and can not be in this proceeding, because it is a rate, which, in the decision of the Commission is regulated by principle of water competition both from Ashland to Newport and from Newport to Louisville, and from Louisville to Frankfort. That rate, therefore, is presumably as low a rate as could be expected to be made by the railroad companies because it has in it every element involved in the principles of water competition. Now we have a rate in force from Ashland to Frankfort, and this complainant comes before the Commission with the claim that that rate is extortionate to come by way of Lexington, and that they want a rate from Ashland to Frankfort via Lexington, which is less than this rate by way of Newport, which is fixed at the minimum figure by this principle of water competition. As I understand it,—the contention of my friend on the other side is based on the idea that in the first place they have a right in routing a shipment from Ashland to Frankfort to fix the route by which it shall go. Now I say at the outset, I think this is a mistake. It is, I think, a principle not only recognized by the Interstate Commerce Commission, but one based on good sound sense that if a shipment is consigned to a certain destination by a certain line that the matter of the particular route that these two carriers shall transport this shipment over to the point of destination is a matter of choice



with them and not within the control of the shipper. For instance, in my mind, they have a right if a shipment comes from Ashland to Frankfort to send it by Newport or Lexington. I don't think the shipper can say anything about that. I think it would be in the discretion of the carrier. Of course, I don't mean to say that they should be allowed to exercise any unreasonable amount of discretion upon their part, as for instance if the C. & O. ran to San Francisco, and then the L. & N. ran from San Francisco to Frankfort, I don't contend that they would have a right to route shipments by way of the C. & O. and then to Frankfort via L. & N., but in point of time, and in point of convenience to the shipper it makes absolutely no difference whether by way of Lexington or Newport if both routes take the same rate. As I said, it makes no particular difference to the shipper, and in this instance it goes to Frankfort within the same time—or so close to it that the difference would be a negligible quantity; therefore, so far as the route of the carrier is concerned they have a right to route by way of Newport; and thus you will see that so far as the desire of the shipper is concerned, for that matter, it depends upon the choice of the carrier. I understood their counsel here to say that they desired to go by way of Lexington because it is a quicker route—at least that is the information I gathered. Now this is a singular thing, because it has been shown that they are shipping their goods to Frankfort not only by these lines, the C. & O. and the L. & N., but also by the N. & W., which line comes down the Ohio river by way of Cincinnati. Now it is a curious thing that he has shipped some of his shipments by this route, and then some by these other two routes and gets the same rate. Also, another singular fact is that the N. & W. route is a longer one than by these other two lines. It crosses the Ohio River twice, whereas by the L. & N. and the C. & O. it does not cross at all. Now in the outset, the question presents itself: Has the complainant any ground for complaint in point of either route, any strict legal right, or in point of equity, as against the rate which is fixed by the C. & O.—a rate of 21 cents, Ashland to Lexington, and the rate of 13 cents by L. & N. from Lexington to Frankfort? Here is another point; he can take that 30 cent rate and get his shipments here just as quick in time as going by the N. & W. I suppose this Commission will feel it their part to do so in this investigation to treat this question as if presented upon this question:—Is the C. & O. rate of 21 cents

from Ashland to Lexington, and the rate of 13 cents by L. & N. from Lexington to Frankfort unreasonable? If these rates be reasonable, then there is nothing in this case from any point of view from which it may be approached.

Now as to the question of the reasonableness of the C. & O rate, (that is the only one I have to do with here), is the C. & O. rate of 21 cents unreasonable. WHAT IS AN UNREASONABLE RATE? And can this Commission define in any part what it is; and can they cite any law by which it can be defined? I take it there is none. I take it that there is no question which comes before the railroad people—traffic managers—or with which lawyers have deal, that is so troublesome a question as this one pertaining to rates. So many elements enter into it, and it is so complex that when you get a system of rates, if you attempt to destroy one it is like taking a brick out of a house—the whole thing may rest upon it, and when you break into one part, it destroys the whole structure.

Now we start out to define whether this is a reasonable rate or not. This Commission has already declared that this rate from Ashland to Newport is reasonable, with which an attempt is made to compare others with this rate. This rate of 13 cents from Ashland to Newport is an abnormally low one, and it is not to be taken as a guide or measure for other rates. It may be taken as an element of comparison, but not as to determining the reasonableness of another rate. This Commission knows that this is an abnormally low rate. Then, we have another factor entering into this question—it is a fact that this Commission undertook to revise the railroad rates in Kentucky several years ago, and it allowed the rate of the C. & O. to stand, and lowered the rates of other companies, and used the rates of the C. & O. Railway Company as a standard of comparison, and when that was done the reasonableness of their rates was thus passed upon, and those rates determined to be the standard; and as is shown by the C. & O. tariff sheets and classification the same rates were embodied therein as is now in dispute, and as I say, these rates were taken as the basis for regulation of other railroad rates in Kentucky. Now the material question before this Commission, and one which is bound to be settled at the outset— is WHAT ARE THE FACTORS TO BE DETERMINED AS TO WHETHER A RATE IS REASONABLE? Now let's take for a basis of comparison the rate from Ashland to Newport. From Ashland to Newport the

distance is 144 miles; from Ashland to Lexington it is 124 miles. It is a less distance from Ashland to Lexington than from Ashland to Newport, or Cincinnati; yet, the rate is 8 cents higher for that route of less distance. But it is unnecessary to enter into a discussion of that, because many factors enter into the question of the reasonableness of a given rate. So many things enter into it besides distance that it might be that even a distance of 50 or 100 miles is a small factor. Now what are the conditions existing here? Now in the first place, notwithstanding the disposition of the witness who was introduced for the complainant the other day about water transportation. Everybody knows that where there is water transportation that it is probably one of the most important factors in fixing rates. The railroads are bound to meet water competition. This is the authority of the C. & O. Railway Company in fixing its rate from Ashland to Newport. And then there is the exceptional character of the grades on the route from Ashland to Newport. There are practically no grades there. For all practical purposes this is a level track from Ashland to Cincinnati. Now I want to call the attention of the Commission to this fact that the C. & O. Railway system in Kentucky is divided into two divisions—what is known as the Cincinnati Division coming from Ashland to Cincinnati, and what is known as the Ashland Division. The Ashland Division is comprised of two districts, viz.: the Lexington District, including the road from Ashland to Lexington, and the Big Sandy District, including the road to the Elkhorn country. Now if the Commission will look (I suppose they have a profile, as one of the records, in its office), if the Commission will look at the grades of the Cincinnati Division from Ashland down I think they will find the maximum grade anywhere on that line to be only about 14 plus. I don't think there is any grade there more than that. Now if you will look at what comprises the Ashland District, the Ashland Division, or Lexington District and which is the line under investigation in this case, you will find all very serious grades running from slight grades, to Corry Hill, which is 142½ feet. You will find other grades, Soldier one side of the hill 51 feet, and on the other side 55 feet, and there are others running 55 and 60. And there is a grade of 59 feet between Lexington and Chilesburg. The cost of operation on this Division is simply enormous as compared with the cost of operation between Ashland and Cincinnati. The amount

of tonnage which an engine can haul is enormously less than one can haul over the other route. Then another factor entering into it—the density of traffic is slight on that division as compared with that on the Cincinnati Division. Now take the cost of operation, for instance. I have the figures as to the cost of operation for instance between the Ashland Division and the Cincinnati Division. (The Commission will bear in mind the difference in cost of operation, this being an important factor.) Also the cost of operation upon the Ashland Division, which comprises this Lexington road, is 86 per cent of the total earnings. The cost of operation upon the road from Ashland to Cincinnati is 51 per cent, and the difference you will see between the Ashland Division and the Cincinnati Division is 35 per cent as to the cost of operation alone, without considering at all the question of water competition down the easier route. That is not all—This Ashland Division where the cost of operation is 86 per cent, is made up of two lines—the one up Big Sandy, and the Lexington District. Now on the Big Sandy District the grades are easy until you get to a point near Elkhorn City, and there the highest grade is only 16. I believe there is only one other little grade there about 24 or 30, but they are nothing as compared with the grades from Ashland to Lexington. Therefore, when you say the cost of operation on the Lexington District is 86 per cent you are including the cost of operation up Big Sandy District where there are practically no grades. Now in point of fact, the cost of operation from Lexington to Ashland is almost 100 per cent; not only that, but it is the judgment of the people connected with this railroad company, whose business it is to know about these matters and look after the interests of their company—that the cost of operation there is over 100 per cent, so that this road considered as an independent factor (which it must be) cannot be operated at all by the C. & O. except at a loss. It would be better to give it up and turn it over to somebody else, but for its use as a part of interstate road for interstate shipments, and as a part of the through line. Now those are the factors which must be taken into consideration when you come to consider the difference in the rate from Ashland to Lexington of 21 cents and the rate of 13 cents between Ashland and Newport. When you come to consider this, and compare the Lexington rate with the Newport rate, those are the things that are bound to be taken into consideration in judging the reasonableness of the Lexington rate. Taking

into consideration that the Newport rate has been considered to be low, and not to be considered as a comparison; that it is fixed with reference to river competition, and where the cost of operation is reduced to the minimum—will anybody say at all that that rate can be compared with the one where we can haul very little tonnage, comparatively; and where there is very little tonnage comparatively to haul? Also where the cost of operation is 100 per cent, or over; then can you say that a difference of 8 cents in the rate (which comparatively sinks to nothing), can be taken into consideration in considering the reasonableness of a rate. NOW THIS IS ONE POINT I WANT THE COMMISSION TO THINK ABOUT. I don't understand hardly what is at the bottom of this complaint.

Chairman Siler: They are after a lower rate.

Mr. Shelby: A child cries for the moon, but does his cries bring him to a realization of that for which he cries?

Now I have here a list of figures that will be interesting for the Commission to consider. Here is a statement of the carload shipments of leather received at Frankfort during the year beginning May 1, 1908, and ending May 1, 1909, from all sources of the country. The number of carloads received at Frankfort was seventy-one. Now where do they come from? Who sent them? Corry, Pa., sent 25; Ashland, Ky., (This complaint) 22. I think that the testimony of Mr. Shaut the other day shows that it was 23 cars, and it may be that there was a discrepancy. Counting from May 1st, in that year, Corry, Pa., sent 25 of these cars; Ashland, Ky., sent 22; Boston, 4; Fondulac, 1; Louisville, one of the largest manufacturers of leather in the world, sent one. Philadelphia, 2; Kenosha, Wis., 2; Brocton, Mass., 2; Cincinnati, 5, and so on. The Commission will therefore see the effect of the Corry, Pa., rate comparison. Will also see that Ashland, Ky., this complainant, comes within 2 cars of shipping as many cars of leather to Frankfort as Corry, which is first on the list. Of all points combined, which sent leather to Frankfort, Ashland sent more, with the exception of Corry, which sent 25. Now another fact; it will be found that these rates have been talked about, and it will be seen here how these rates show up from various points. Corry, which sent the highest amount to Frankfort, pays 34 cents; Ashland, the complainant, pays 30 cents, Boston, 47; Fondulac, 49; Louisville, 13; Philadelphia, 45, Kenosha, 34; Brocton, 47; Cincin-

nati, 17; St. Paul, 47; Harriman, 38; Hartford, 47; Rome, 50; Benecia, Cal., 115. Now the Commission will see that of all the points which ship leather into Frankfort, and which come in competition with Frankfort, this complainant has a better rate than any with the exception of Cincinnati and Louisville, the rate from one of which is 17 cents and the other which is 13 cents, and all of which compete with Ashland in the market at Frankfort for leather. Now looking at the thing in the broadest sense, what have they to complain of? They have a better rate than any one they come in competition with, save one or two exceptions, where conditions are governed by water competition—except when they route their shipments via Lexington. Now with all candidness, Lexington is a good place to be if for only a little while, and I am serious when I say that I don't blame them for wanting to come by Lexington, and it must appear that there is much exaltation in being there, so much that even dead freight can feel it; but their desires must not be gratified at the expense of justice, or by going over high grades and hills, the like of which you can hardly find anywhere in this country,—in preference to going down the river where cars are run almost from Ashland to Newport without an engine . . . . .

Chairman Siler: What have you to say further, gentlemen?

Mr. McLellen: We have an answer to file setting up the fact that this rate is not a joint or through rate, but made up of locals.

Judge Dearing: You will notice that in the original petition it is stated in there that it is a joint rate. I guess that is a mistake, and we want to strike that out.

Chairman Siler: Very well, have you any other statement to make.

Judge Dearing: I want to say in the outset that as set out on the Veneer Lumber Company case, the Commission has no authority over joint rates. You will remember that the Commission so decided in that case, and I suppose this matter will come up on the reasonableness of the rate from Ashland to Lexington over the C. & O., and from Lexington over the L. & N. I suppose that after these facts are considered, and after the introduction of testimony, and the conclusion of arguments the Commission will have no hesitancy in passing upon it.

Chairman Siler: Do you desire to make any other statement?

Mr. Malin: In view of the fact that Mr. Shelby has gone into the facts so fully—

Interrupted by Chairman Siler: I think we had better go ahead with the witnesses.

Mr. Malin: I am at the pleasure of the Commission.

Commissioner Ferguson: Let him go ahead with his statement.

Chairman Siler: Certainly.

Mr. Malin: I want to say in the outset that I am going to be brief. It is with some embarrassment that I come before this Commission surrounded by freight agents and distinguished lawyers familiar with these questions. I want to say that I am not familiar with freight rates, and come before you simply as a plain country lawyer, representing an industry that ships to another industry here in Frankfort; and asking consideration of this Commission in adjusting the rates of these railroad companies, which rates we contend as now exist, are extortionate, unfair and unjust.

Now at the outset I don't understand that this Commission holds anybody to the technical rules of pleading. I have understood that it is a body open to any man, whether with lawyer, or without, who can come here and lay before it his case, without being held to the strict rules of evidence.

We charge in this complaint that which is a fact—that they charge a rate of 34 cents for the transportation of leather from Ashland to Frankfort. We do not know what the C. & O. gets, or the L. & N., the F. & C., or any other company. They make that to suit themselves; but it is the C. & O. that makes this charge, and when we ship leather from Ashland to Frankfort we pay the C. & O. Railway Company 34 cents per hundred pounds by way of Lexington. Mr. Shelby says that it is with the Company whether or not they ship it by way of Lexington. I say, sir, that a shipper has the right to ask, and has a right to demand, that they carry his freight by the most direct route to destination, and when we deliver this leather to be transported to the Hoge-Montgomery Company at Frankfort, we have a right to demand that it be shipped by the quickest and most direct route, which is by way of Lexington; and that we have a right to demand that we be given a rate from Ashland to Frankfort by that most direct route—a rate that is reasonable and just.

Now Mr. Shelby tells you that we have a 30 cent rate when we

ship it by way of Newport. Now it is not peculiar that we take that 30 cent rate. Of course we take it, because it is a choice between a rate of 30 cents and one of 34 cents. BUT WHEN WE PAY 30 CENTS WE PAY MORE THAN WE OUGHT TO PAY.

I want you to pay particular attention to one of Mr. Shelby's statements in this matter. He says that we get that 30 cent rate to Frankfort via Newport for the reason that there is a 13 cent rate from Ashland to Newport on account of river competition and then 4 cents to Louisville from Newport because of such competition, and 13 cents from Louisville to Frankfort because of river competition; then, on anything we come to Louisville with we must have river competition.

Now when we ship leather via N. & W. it goes down the Ohio river, and as I understand it, it is transferred and comes to Frankfort via F. & C. The statement that Mr. Shelby makes that it comes a longer route when shipped by the N. & W. is, I believe, a mistake. He refers to rates all over the country, but there is one rate Mr. Shelby never called the attention of this Commission to, and that is the rate from ASHLAND TO LOUISVILLE—over the C. & O., by the way of Lexington, up these high grades, and over these hills, and down over the L. & N., and through Frankfort—all for 13 cents.

Gentlemen, I want to leave one thought for your minds in conclusion, and that is this—The rate they have on leather by the way of Lexington to Frankfort is 34 cents, YET WE CAN SHIP IT OVER THESE SAME HIGH HILLS, and UP THESE SAME HIGH GRADES, INTO LOUISVILLE FOR 18 CENTS. There are some other matters which I will probably refer to in my argument, but I don't want to take up the time of the Commission.

Mr. Shelby: I will ask that Mr. Hotchkiss take the stand.

WHEREUPON, Mr. E. D. Hotchkiss, General Freight Agent for the C. & O. Railway Company, was duly sworn by Chairman Siler, and testified as follows:

Examined by Mr. Shelby for C. & O. Railway Co.:

Q. Mr. Hotchkiss, state to the Commission your official relation to the C. & O. Railway Company.

A. I am General Freight Agent.

Q. How long have you occupied that position?

A. Since the first of January, 1887.



Q. In the performance of your duties as General Freight Agent, state whether or not it is necessary for you to familiarize yourself with the theory of rate-making in railway transportation?

A. Yes, sir.

Q. Who makes these rates upon the C. & O. Railway system?

A. They are made under my supervision, under what we call our Tariff Bureau, which is under my supervision, in the direct charge of the Assistant General Freight Agent, under my charge.

Q. Is it not a fact that the C. & O. Railway system in Kentucky is divided into two divisions—I believe the Ashland Division and the Cincinnati Division?

A. The lines in Kentucky are under one head. Under what is known as the Kentucky General Division. Of the Kentucky General Division there are two divisions as you state. The Cincinnati Division running from Ashland to Cincinnati, including its branches; the Ashland Division, including the line from Ashland to Lexington, and the Big Sandy District and its branches, the Big Sandy line running from Ashland to Elkhorn City.

Q. The road running from Ashland to Lexington comprises what is known as the Lexington District, does it not?

A. Yes, sir.

Q. Mr. Hotchkiss, I will get you to file as a part of your testimony, with the Commission (I don't know whether it is among the records of the Commission or not), these profiles of the C. & O. system.

A. These are the official profiles filed in their annual report.

Chairman Siler: Let those be filed.

Q. What is the cost of operation on the Cincinnati Division road running from Ashland to Cincinnati, Newport and Covington?

A. For the nine months ending March 31, 1909, of this present fiscal year it was 51 per cent.

Q. What is the cost of operation on the Ashland Division comprising the Lexington and Big Sandy Districts?

A. For the same period it was 86 per cent.

By Commissioner Tarlton:

Q. You mean freight and passenger both?

A. Yes, sir. I want to explain for your information that this is furnished by the comptroller, taken from statistics furnished by

him, and can be certified at any time. I have not the records, but have that information.

Q. (By Mr. Shelby): Taken from the official records of the company?

A. Yes, sir.

Q. Now in estimating the cost of operation on the Ashland Division, which comprises the Lexington and Big Sandy Districts, is the cost of operation on the Lexington District greater or less than on the Big Sandy District?

A. Very much greater, sir.

Q. What, in your best judgment, or opinion, is the percentage of the cost of operation as an independent entry?

A. Of course I have not the figures, and what I might say might not be official because I have not the figures. The two districts are operated under the same, but as a separate organization,—I doubt whether the Lexington District would successfully maintain itself.

Q. That is, the cost of operation would be so great?

A. Yes, sir, it would hardly be worth operating.

Q. Now considered with reference to the density of traffic, how does the Lexington District compare with that road from Ashland to Cincinnati, or with the line up Big Sandy?

A. Less than one-third with the density of traffic, on the Cincinnati Division; and would say to-day, considerably less than on Big Sandy District, although the Big Sandy District is comparatively new, and not thoroughly developed, but there is growing on the Big Sandy District, as you gentlemen probably know, enormous coal and lumber traffic, which I imagine in a few years will make that road a heavy dense line. The traffic on the Lexington District has the slightest density, in fact the maximum tonnage which we can haul on the Lexington District is 1,100, and we haul from 3,000 to 4,000 on Cincinnati Division. We haul the 3,000 or 4,000 on the Cincinnati Division with the same power as it takes to haul the 1,100 on the Lexington Division. Now on the Big Sandy Division we haul with the same power twice as much outbound traffic as we do on the Lexington District, as will be seen from this profile, these lines show the grades what we determine as in favor of traffic. There are no grades in favor of traffic on the Lexington Division. It is up and

down nearly everywhere you go. In order to plainly demonstrate on this profile it is marked off in feet.

Q. Now Mr. Hotchkiss, as you are responsible for these tariffs on the C. & O. Railway system, I will get you to state to the Commission the facts which, in your judgment, lead you to the conclusion that the rate of 21 cents per hundred pounds upon leather, which I believe is in the fourth classification, is a reasonable and a proper rate.

A. We have a fourth class rate of 21 cents in Kentucky, per hundred pounds, with the exception of on Cincinnati Division; and in Virginia it is a lower scale than the State Corporation Commission has authorized in the State of Virginia. Now the position that we have taken is that about ten years ago the C. & O. Railway was carrying very much higher rates in Kentucky on the Lexington Division than on any other part of their system. They found the basis of rates very much higher when the old E. L. & B. S. Company operated this road as an independent organization, and maintained those rates for quite a number of years. Within my own knowledge, not longer than 12 years ago we made a material reduction of from 20 to 30 per cent so as to make the scale of rates conform to those all over Kentucky, so that the rates through Kentucky are no higher than through Virginia, West Virginia, or any of the three states. Another reason, if you please, for our position is that the Kentucky Commission in their maximum scale fixed the rate from Ashland to Lexington at 31 cents, which is our figure. I might state another fact as to the rates on the Lexington Division in Kentucky being higher is because we regard them as having been fixed for us.

Chairman Siler: The Commission didn't express their position as to that rate from Ashland to Lexington.

Hotchkiss: I think they expressed themselves that the rate was found to be reasonable and fair.

Q. (Mr. Shelby) That is that rate of 31 cents.

A. That was the schedule fixed for the railroad, for the L. & N.

Q. I will get you to state to the Commission, as an expert traffic man, what are the elements that enter into the question of fixing rates and determining their reasonableness?

A. The reasonableness of a rate, as I understand it, and as it is generally considered—(Now Mr. Shelby refers to me as an expert,

of course we don't consider ourselves experts, but believe we know something about it), is based upon what the traffic will stand. And that practice of making rates is reasonable and fair, just as much as it is fair for a merchant to secure the best prices for his commodities which he sells. Now there are conditions that some times arise to make it different, and where rates are made under different circumstances, just as this complainant has referred to the rate from Ashland to Louisville and from Louisville to Frankfort. Now we don't deny those rates. They can ship leather from Ashland to Louisville for 18 cents. Our position is that we have a line from Ashland to Louisville which is under our control, and these two points are on the C. & O., and the Interstate Commerce Commission has long since laid down that a carrier may compete with two points regardless of the intermediate point, and I don't consider that the statement as to going to Louisville has any bearing. It is a question of competition, and if we determine that we can haul that traffic it is a matter for the Company to determine as to what rate they will haul it for, although I don't think we would get rich at it. Neither do we get rich in handling grain from Cincinnati to Winchester at 8 cents charging our local mileage scale, and if the Company wants to meet competition and haul this commodity to Louisville at 18 cents, I don't think the Kentucky Railroad Commission would want the C. & O. to go out of business and quit making rates to meet that business.

Q. It is a fact as to competitive points the rates are made with reference to the competition?

A. Entirely so. Other lines fix their rates as to both freight and passengers, and it is up to us to determine whether we will meet it. If we conclude that the business is undesirable we stay out, otherwise, it is a matter for the carrier to determine.

Q. What effect has water competition as to the fixing of rates?

A. Well I recall, in that connection, what C. P. Huntington said when the line was built along the Ohio and Kanawha rivers, that within less than twenty years there would be no steamboats on the Ohio river. The competition is certainly just as active as it was then. Of course we don't make as low rates as the Ohio river, because it must be taken into consideration that there are some disadvantages to labor under in river transportation; the distance from town to town, and in many cases the river banks are a disadvantage,

therefore we don't make as low a rate as the river, but we make the rate just low enough to enable us to secure the traffic.

Q. Now is it not a fact that the river does practically fix the railway rates to Louisville?

A. Unquestionably so. From Ashland to Louisville and from Cincinnati to Louisville.

Q. Now what effect would the cost of operation and the density of traffic have upon the question of reasonableness of a rate, assuming that the reasonableness of a rate is determined, in part at least, by the question as to whether there is a fair return for the services rendered?

A. That question I can best answer by calling attention to the Tide Water Railroad. There for a distance of over four miles the road is regarded as the most profitable. The traffic moves almost absolutely in train loads from the mines to point of destination. And within 34 hours after cars leave, they are back for another load. Now, notwithstanding the cost of operation on this line, it is regarded by the C. & O. as the most profitable because of the density of traffic. Wherever the traffic is heavy, the rate is based upon that and upon its density, but wherever it is light, you have to charge a higher rate or you can't live. Of course we don't undertake to make any part of our system pay any higher than any other part. We charge a higher rate on our Greenbrier Division, but that is on account of the slight density of traffic.

Commissioner Tarlton: What do you mean by density of traffic?

A. Heavy and large tonnage, and the frequency of it. If you will pardon me, I think the best illustration of that is the scale of rates between the East and the West and the scale between the North and the South. There is a basis from Chicago to New York, and a rate scale from Baltimore to Cincinnati, and the rate scale of the C. & O. is prorated upon the rates from Baltimore to Cincinnati, and the maximum from Newport News to Cincinnati is the water rate in effect from Baltimore to Cincinnati. Now this is the maximum rate that we can charge. We don't start with five miles, as usually is done, but we start with the maximum and work back.

Q. Considering the divers conditions that exist with reference to this Lexington District road from Ashland to Lexington with reference to the Cincinnati Division, from Ashland to Cincinnati, which would yield the most net profit to the carrier, a rate of 13 cents from

Ashland to Newport, or a rate of 21 cents from Ashland to Lexington, taking into consideration all the factors you have discussed, both the cost of operation and the density of traffic and so on?

A. That is most particularly an operating question, but from my definite knowledge, I would unhesitatingly say that the same volume of traffic for 13 cents from Ashland to Newport would yield more profit than the same volume from Ashland to Lexington at 21 cents, and I think the cost of operation, as has been explained, taking the nine months of operation of the present fiscal year—I might say it is based probably as low as the cost of operation for the year 1908. In this years operation they have kept the cost down very low, practically to last years cost.

Q. So the present year's percentage of 86, and 51 is based upon a very low cost of operation?

A. Yes, sir.

Mr. Shelby: I suppose the Commission will take notice of the contract between the C. & O. and the L. & N., by which the C. & O. has trackage rights over the L. & N?

Mr. Malin: It may be considered as a part of the record.

Mr. Shelby (Question) You don't deliver freight or receive it at Frankfort?

A. No, sir.

Q. Have you a right to make a rate from Ashland to Frankfort?

A. Not except with the permission of the L. & N.

Q. Did the C. & O. undertake to make this rate of 30 cents from Ashland to Frankfort, or is it made up of two rates independently?

A. Made up of combination rates.

Q. You heard the statement of Mr. Malin that the complainant in this case was charged a rate of 34 cents from Ashland to Frankfort. I will get you to explain exactly in what sense this is a fact?

A. I would not be able to say whether they pay the C. & O. 34 cents or not.

Mr. Malin: I want to say that this is paid on shipments made by the Ashland Leather Company by way of Lexington.

Q. (By Mr. Shelby) Then in collecting charges for a shipment the C. & O. would collect it and it would be proportioned?

A. Yes, sir.

Q. In a combination shipment to Frankfort via Lexington District, the freight would be billed to Lexington, and then rebilled to Frankfort?

A. Yes, sir, rebilled.

Q. So there is no through billing?

A. There is no through billing except where joint freight rates are established.

Q. No through rate has ever been established by the C. & O. to points on the L. & N., between Ashland and Louisville?

A. No, sir.

Q. I will get you to state, from your experience and knowledge of rate making, taking into consideration all the conditions, whether or not the rate on shipments of leather from Ashland to Lexington is a reasonable and just rate considered with reference to the question of profits for the services rendered?

A. I think, based upon the scale of the C. & O., that it is the highest rate the C. & O. could charge reasonably upon the traffic. I would not say, based upon the maximum that it is a profitable rate within itself. It is unquestionably a reasonably low rate for the service.

Cross-examined by Mr. Malin.

Q. Your connection with the C. & O. is purely with the freight department; not the operating department?

A. No direct connection with the operating department.

Q. The information you have given with reference to the operating department is what has been furnished you by other officials?

A. Yes, sir. By records furnished by the Comptroller. Furnished by the President, from the records of the Comptroller.

Q. I believe you say that the rate charged is the highest rate that could be charged?

A. No, sir, not the rate to Frankfort; the rate to Lexington. I say it because it is a 4th class rate according to our mileage scale, and leather is classified as 4th class.

Q. You could change the tariff?

A. That would depend largely upon the amount. I don't think the Commission ever raises any question on the question of reduction.

Q. You speak of the question of competition entering into the fixing of rates. Competition has nothing to do with the cost of transportation, has it?

A. No, sir. But it does have this to do with it. I said a few

moments ago that where rates are made by other lines the carrier has to determine whether it will stay out of it or not. I know of cases on the C. & O. where we have not made reductions to meet competition of other lines because we don't think the business desirable.

Q. Your whole theory is to make profitable freight rates for your line?

A. Unquestionably.

Q. You don't make rates where there is no profit?

A. There are instances.

Q. There are?

A. Yes, sir, in some instances when we realize that the future traffic will pay, we help people in the building up of the road. I think the C. & O. does in some instances haul for nothing.

Q. I mean as a general rule; it is to make a profit?

A. Yes, sir, just as a merchant would fix his price on his goods.

Q. This is the general policy of all roads?

Q. Now, is not the question of distance an element in the question of transportation?

A. To some extent.

Q. A longer distance in some cases over the same line of road?

A. That depends. After you get a certain distance it is a question. Then comes the question of the increase of the cost of fuel, and the increase of the cost of engineer and fireman, and conductor; and it takes a little more coal for 150 miles than it does for 100 miles.

Q. You spoke of competition to Louisville. Now that in no wise affects the cost from Ashland to Louisville, does it?

A. That depends on the line.

Q. Now how does it affect the cost on your road?

A. I said the rate was fixed by a combination with another carrier. Of course after we determine to enter into the traffic we don't stop to consider the cost.

Q. In transporting leather from Ashland to Chicago, how would that go if shipment be made by C. & O.?

A. By way of Cincinnati, and what we consider a desirable route would be by Big Four.

Q. You take your freight to Cincinnati and deliver it to the Big Four, then what does the Big Four do with it?

A. Takes it to Chicago.



Q. Do they deliver it, or do they not deliver it to the I. C., and it delivers to Chicago?

A. The I. C. hauls it from Kankakee. They have track arrangements somewhat similar to ours here.

Q. Then in transporting leather from Ashland to Chicago it passes over three lines of railroad?

A. Yes, sir, by that route. It could pass over several other routes which are followed.

Q. Now the rate to Chicago is 21 cents?

A. I don't know. Even if it is, it is made under dissimilar circumstances than the rate from Ashland to Frankfort.

Q. But it is quite a longer distance, is it not?

A. Yes, sir.

Q. About three times as far?

A. Fully three times, yes, sir.

Q. It is hauled by one additional line than in hauling from Ashland to Frankfort?

A. Yes, sir.

Q. Do you know where Corry, Pa., is located?

A. Yes, sir.

Q. What part of Pennsylvania?

A. In the Western part.

Q. In hauling from Corry what route is covered?

Interrupted by Judge Dearing: I don't think a comparison of these rates has any bearing unless similar circumstances are shown.

Mr. Hotchkiss. I think I might say that I have no voice in the establishment of rates from Corry, Pennsylvania, and I am not, therefore, a competent witness, as to Corry, Pa., because the C. & O. has no route.

Q. In giving your percentage of the cost of operations on Ashland Division, I believe you include both passenger and freight traffic?

A. I said that. I am not sure. I think I did answer to Col. Tarlton, but I am not sure that I am correct. I will say that I was talking the other day about another case which is before the Interstate Commerce Commission and it is in connection with the Lexington Division, and in talking about the case I asked the President as to the conditions, and as to the cost of operation on the various divisions of the road, and he gave me the cost of the entire district, and I think

it has a decided bearing on this case. Any way this is the statement I make. It was from one of the officials of the C. & O., and if it is necessary I can have a statement sent to this Commission.

Commissioner Tarlton: Is the Big Sandy Division a new line?

A. Yes, sir.

Q. Not much traffic on it?

A. Yes, sir, according to the way they are preparing up there for business.

Q. I don't mean as to the future, but during the past year?

A. Yes, sir, within the last few months it has developed quite rapidly.

Chairman Siler: One of the true tests of a rate is whether or not a commodity will move on that rate; is that correct?

A. I think that is a reasonable conclusion. If a rate is unreasonable and extortionate and the traffic cannot move on it, and if a man will demonstrate to the C. & O., or any other railroad that a rate established is prohibitive, I think there is no doubt but what the carrier would see that there is an adjustment made. I would like to call the Commission's attention to this fact, if you please. Of all roads, the least ton per mile is the C. & O. It depends on its enormous coal traffic, which is 65 per cent of the tonnage. But for its coal traffic, it is lost. It does not seem that its rates can be taken for unreasonable or unfair.

Q. (By Mr. Shelby) There is one question. This rate that exists is a 4th classification rate, and there are other commodities included under that classification of the whole C. & O. system?

A. Yes sir, for the same distance. The mileage scale would be the same, for 124 miles in W. Va. or Virginia.

Q. And it is true that it exists on other Divisions?

A. Yes sir, with the exception of the Cincinnati Division. There it is governed by river competition.

Respondent, L. & N. Railroad Company then introduced Mr. Compton, Traffic Manager for L. & N. Railroad Company, who being duly sworn by Chairman Siler testified as follows:

Examined by Mr. McLellen for L. & N.:

Q. What is your official position with the L. & N?

A. Traffic Manager.

Q. How long have you been in the service of that company?

A. Thirty-eight years.

Q. Kindly state what are the duties of your office.

A. My duties extend over the entire traffic of the L. & N.—over passenger, mail, express and other items. Have general supervision, and my work is submitted for the approval of my superior officers.

Q. What rate is there in effect on carload lots freight from Ashland to Frankfort?

A. There is no through joint rate in effect from Ashland, Ky., to Frankfort, Ky. The rate from Ashland, Ky., to Frankfort, Ky., is constructed on the basis of the sum of two rates; the rate from Ashland, Ky., to Newport, Ky., and the rate from that point to Frankfort, Kentucky.

Q. What are those rates?

A. The rate from Ashland, Ky., to Covington, Ky., Newport, Ky., and Cincinnati, Ohio, is 13 cents per hundred. From Covington, Ky., Newport, Ky., and Cincinnati, Ohio, to Frankfort the rate is 17 cents. The sum of these two rates totals 30 cents, which is the billing on shipments of leather from Ashland to Frankfort.

Q. How long have these combination rates been in effect?

A. I can not tell you about the rate from Ashland to Newport, Covington and Cincinnati. I can tell you, however, that the measure of that rate is with competition with the Ohio river. The rate from Cincinnati to Frankfort is fourth class rate that has been in effect for a number of years. That rate, and other rates in the fourth class, and in fact, all other classes from Cincinnati to Frankfort are measured by the competition in the Ohio river via Carrollton, Ky. Those rates bear relation to the rates from Louisville, Ky., to Frankfort, and in a measure those rates from Louisville to Frankfort are made to meet active river competition. The service runs very regular—two sailings per week. I know these facts, because I have dealt with them for period of over 30 years. The rate from Louisville to Frankfort is 13 cents, and is 4 cents lower than the scale of the L. & N. The local scale of the L. & N. is deterred from because the competition of the Ohio and Kentucky rivers forces it. The fourth class rate from Lexington to Frankfort is 13 cents. For the reasons that the competition in the Ohio and Kentucky rivers have the effect of fixing a 13 cent 4th class rate from Louisville to Frankfort, made it a less rate from Frankfort than from Lexington to Frankfort. Lexington being a competing point, it was believed by our company that it was reasonable to make the rate from Lexington to Frankfort the same as from Louisville.

It is true that there is no river competition between Lexington and Frankfort, but we did adopt from Lexington to Frankfort, an arbitrary, you might say, of 13 cents fourth class rate, which is the rate to-day.

Q. Then this 13 cent rate is 4 cents less than the fourth class rate?

A. Yes sir.

Q. What can you say as to the reasonableness of this 13 cent rate in effect from Lexington to Frankfort?

A. In my opinion the rate from Lexington to Frankfort of 13 cents is reasonable. It is reasonable because it is less than the mileage scale of the L. & N., and because the benefit is given of the competition at Louisville, as the rate has been fixed by the Ohio and Kentucky rivers. As applied on leather in carloads which is classified as fourth class, I consider it extremely reasonable.

Commissioner Tarlton: What is the 4th class rate from Lexington to Louisville?

A. The fourth class rate, Mr. Commissioner, from Lexington to Louisville is 15 cents. The fourth class rate from Louisville to Lexington is 15 cents. It was made 15 cents between those two points because the competition between Cincinnati and Lexington forces that rate, and that same rate applies between Lexington and Cincinnati.

With further reference as to the reasonableness of the rate from Lexington to Frankfort on leather—Leather is worth from 30 to 37 cents per pound. I use 35 cents to illustrate. Now a carload of leather of 24,000 pounds is worth \$8,400; the transportation charge of the L. & N. from Lexington to Frankfort is \$26.00. The value of the service to the value of the property is 37—100 of 1 per cent of its value. You could not insure the property in a warehouse at that percentage of the cost. I think, taking these things into consideration, that it shows conclusively that the rate is reasonable.

Chairman Siler: Is 24,000 pounds about what a carload amounts to?

A. The Official and Southern Classification show the minimum carload at 24,000 pounds leather in carloads.

Mr. McLellen.—Continues.

Q. From the records, what are the principal shipping points of leather, in Kentucky?

A. The principal ones in Kentucky are Middlesborough and Louisville.

Q. What are the rates in effect from these points?

A. The rate from Louisville is 13 cents; from Middlesborough, 48 cents.

Commissioner Tarlton. That is all from your own road?

No answer.

Chairman Siler: They don't ship any here?

A. No sir.

Mr. Compton: I have compiled a statement here and would like to file it as part of my statement.

Chairman Siler: Very well.

Mr. Compton: The amount of leather shipped to Frankfort in carloads for period of one year, from May 1, 1908 to May 1, 1909, was 71 cars, of which 25 came from Corry, Pa., and 22 from Ashland, Ky., and the balance scattering. This statement will show for itself. From the points where leather was shipped to Frankfort it moved at a higher rate than from Ashland, yet Ashland enjoyed 30 per cent of the business. This leather moved by the L. & N. Railroad—62 cars, and F. & C. Railroad, 9 cars. The movement from Ashland was all by L. & N. with the exception of one car; so it is not correct to state that the short line to Frankfort over which the business moves is by way of N. & W. and the F. & C. The business moved by L. & N. from Ashland to Frankfort, with the exception of one car. A rate of 17 cents by lines leading from Cincinnati to Louisville and Frankfort, and 13 cents beyond, is charged. So it is correct to state that from all the territory beyond those gateways the rates are made upon the rates to and from the Ohio river crossings. Then you see Ashland enjoys a lower rate to Frankfort than these other points. I say Ashland has a 30 cent rate, and that is lower than from all points which ship leather to Frankfort, with the exception of two, and those two are Louisville and Cincinnati, and the total movement for those two points was six cars in 12 months, showing conclusively that their rate does not cut any figure whatever, because if it had, Louisville and Cincinnati would have furnished all the business to the disadvantage of all other points.

Q. Is this combination basis of making rates to Frankfort, on leather in carload lots the same basis employed generally throughout the country on similar roads.

A. It is the basis usually employed in constructing rates where joint rates are not in force. It is generally accepted as the basis for constructing such rates.

Q. How does the L. & N. rate of 13 cents from Lexington to Frankfort, on leather, compare with the transportation of this commodity for similar distance on the line of the L. & N.

A. Less, for the reason that competition with the Kentucky and Ohio rivers forces it.

Q. What is the number of the tariff governing fourth class?

Q. The tariff governing the rate of 13 cents from Louisville to Frankfort is known as Kentucky Junction Point Tariff No. 1, effective January 15, 1909, and is a re-issue of a previous tariff. It is I. C. C. No. 12, and is on file with the Interstate Commerce Commission, and the Kentucky Railroad Commission.

By Mr. Dearing for L. & N.

Q. In your opinion, should the value of the article enter into the matter of fixing the transportation charge?

A. Leather is classified in the classification as fourth class in carloads. In fixing the classification of course the value of the property is always considered.

Q. In case of loss or damage, the claims would be larger would they not?

A. Oh, yes sir. It would take more money to pay for a carload of leather worth \$8,400 than it would for a carload of sand or coal, or lumber.

Judge Dearing: I want to point out, if you please, that the exhibit filed by the plaintiff in this case contains incorrect rates, and I desire to bring that out.

Chairman Siler: He filed them subject to correction.

Judge Dearing: The file is "Exhibit A." The rate in that from Corry, Pa., should be 34 cents instead of 31. From Pine Grove the statement shows it as 43 cents and it should be 47, and the rate from Lexington to Frankfort should be 13 cents and it is shown here as 10 cents. However, I don't think this affects the case in any way, in the least.

Mr. Shelby: Would you be kind enough, Mr. Compton, to give me that calculation where you reach the result of 37—100 of 1 per cent, and the figures in it?

A. Mr. Compton: A carload of leather is 24,000 pounds, and is valued at 35 cents per pound, for illustration, which would equal \$8,400. A carload of leather at 24,000 pounds at 13 cents per one hundred pounds, equals \$31.20. Divide \$31.20 by 8,400 and you have 37—100 of 1 per cent.

The cost of the service to the value of the property over the entire distance from Ashland to Frankfort is 8—10 of 1 per cent of its value. This is about one-half of what it would cost you to insure it in a warehouse.

Interrupted by Mr. Hotchkiss, General Freight Agent for the C. & O. Railway Company: "And this is insured too, Mr. Compton, so far as our line is concerned."

Mr. Compton: I desire to point out also, Mr. Commissioner, the fact that particular stress is laid upon the rate from Columbus, Ind., and not a single shipment has moved to Frankfort for a period of years.

Mr. Malin for complainant: You quote the rate from Corry, Pa., to Frankfort, as 34 cents?

A. Yes sir.

Q. This is the same rate as from Ashland to Frankfort by the Lexington route?

A. No. sir. The business moves the other way.

Q. That is what you charge when the business goes by Lexington, isn't it?

A. Yes sir. The rate would be 21 cents plus 13 cents.

Q. Now the question of value has nothing to do with the distance you haul it has it—that is, for each mile you haul it the liability encountered is no greater?

A. No sir; the longer we haul it the greater the liability.

Q. Now you haul that leather from Lexington to Louisville and Frankfort for 13 cents, and from Frankfort to Louisville for 13 cents; now isn't the liability from Frankfort to Louisville greater than it is from Lexington to Frankfort?

A. Yes sir, the distance from Lexington to Frankfort is 29 miles, and from Frankfort to Louisville it is 63 miles; therefore the percentage to the mile between Lexington and Frankfort is much less than between Frankfort and Louisville.

Q. Then your liability between Lexington and Louisville would be greater?

A. Yes sir, because it is a longer haul.

Q. And you transport leather from Ashland to Louisville at a less percentage of its value, and at a greater hazard?

A. Yes sir.

Q. What is the distance from Corry, Pa.

A. I have no idea.

Q. Give an idea what it is.

A. I would say that it is approximately 340 miles.

Q. Do you know how leather is hauled from Corry, Pa.?

A. Yes sir, by rail.

Q. What rail?

A. Erie and L. & N.

Q. Do you know by what route?

A. Yes sir, by Cincinnati.

Q. Direct from Corry to Cincinnati?

A. Yes sir, I think so.

Q. Now in hauling this leather from Ashland to Frankfort at 30 cents, over what lines does it go to reach Frankfort?

A. After a shipment of leather is delivered to the C. & O. at Ashland it is hauled to Newport, and there given to the L. & N. at that point. The L. & N. has two routes to haul it—by LaGrange, which would be 27 miles to Louisville, or it can haul it by way of Lexington.

Q. If it is hauled by way of Newport and LaGrange, what is the distance?

A. 121 miles.

Q. What is the rate?

A. 17 cents.

By Judge Dearing for L. & N.

What are the characteristics of the rate from Frankfort to Lexington as compared with the rate from Frankfort to Louisville?

A. I don't think there is much difference.

Mr. Shelby.

I find that for 31 cents \$8,400 worth of property is transported, and upon that basis the C. & O. gets for hauling that much property, four and one-half times as far as the other company, the sum of \$50.40, which is less than twice as much for hauling it four times the distance. In other words it gets a profit of 60—100



This was all the testimony offered by either side, and the case was submitted without argument, and both sides instructed to file briefs.

#### BRIEF FOR COMPLAINANT.

This complaint is filed by Ashland Leather Company against Chesapeake & Ohio Railway Company and Louisville & Nashville Railroad Company because of the rate charged for the transportation of leather from Ashland, Kentucky, to Frankfort, Kentucky.

The Ashland Leather Company operates a tannery at Ashland, Kentucky, and sells leather to Hoge-Montgomery Company at Frankfort. To transport this leather to Frankfort the shortest and most direct route is via Lexington, a distance of one hundred and fifty-three miles.

The defendants charge for so transporting leather in car load lots thirty-four cents (34c) per one hundred pounds.

They transport it via Newport, Kentucky, a distance of two hundred and eighty miles, for which they charge in car load lots thirty cents (30c) per one hundred pounds.

For transporting leather from Ashland to Louisville, passing through Frankfort, and over the same line of road, the charge in car load lots is eighteen cents (18c) per one hundred pounds.

The complainant charges,

1st. *That the rate from Ashland to Frankfort is extortionate, excessive and unreasonable.*

The complaint is not alone that the thirty-four cent (34c) rate via Lexington is unreasonable, nor that complainant wants the lower rate of thirty cents (30c) applied via Lexington.

It is true that in the complaint filed the rate of thirty-four cents (34c) via Lexington is set out, and it is complained that it is extortionate and unjust. But when such complaint is filed it becomes the duty of the Commission, as we understand it, to ascertain what is a reasonable and just rate and so fix it, and it is no answer to a complaint to say that there is another lower rate by another route, and because that rate is not mentioned in the complaint that relief cannot be granted.

We have never understood that technical rules of pleading or evidence apply in hearings before this Commission, but that same is always open for any shipper who feels himself aggrieved to appear

before the Commission, informally if he chooses, and have relief granted if same is justified.

Therefore, we feel that having come before this Commission with our complaint against these defendants, as to rate charged on leather from Ashland to Frankfort, that we are entitled to have, and will have, such rate fixed as in the judgment of the Commission may be reasonable and just regardless of any technical defenses that may be presented by the defendants.

It is but fair, however, to say that Mr. Shelby in his statement for defendants concedes that the Commission will hear this matter and determine the reasonableness of the rate these two companies charge that go to make up the rate from Ashland to Frankfort.

It would seem to require no argument to demonstrate the unreasonableness of this rate when we note the comparison with rates to other points.

It is true that in statement of counsel and references in testimony of witnesses efforts were made to belittle the effect of comparison of rates, but the best evidence that a shipper can have of the unreasonableness of rates is a comparison with other rates. We might have a right to assume that no railroad will haul freight at a loss, and that when it publishes a rate that it is one by which it can make a profit in the handling of such business. In fact, Mr. Hotchkiss in his testimony so admits. (page 34 of record). When we make comparison of the rates complained of with rates to other points it must strike any man that the rate complained of is entirely unfair and unjust, and that this is one of the instances which requires the exercise of the power of this Commission, so recently recognized by the Supreme Court, to fix rates where there is a specific complaint.

We will first compare only the Kentucky rates.

These two lines of railroad haul this leather from Ashland to Louisville over the same line of railroad, a distance of two hundred and fifteen miles for only eighteen cents (18c) per one hundred pounds, or .0167 cents per ton per mile. The Chesapeake & Ohio Railway Company hauls this same freight from Ashland to Newport, Kentucky, a distance of one hundred and forty-two miles, for thirteen cents (13c) per one hundred pounds, or .0183 cents per ton per mile.

They charge from Ashland to Frankfort, a distance of one hundred and fifty-three miles, thirty-four cents (34c) per one hundred pounds, or .044 cents per ton per mile, the rate per ton per mile being

nearly three times as much as in the other two instances cited above.

It may be that the facilities for handling their cars at Louisville will enable them to handle the freight somewhat cheaper there than at a place like Frankfort, but this is more than offset by the additional sixty-two miles which they have to haul it to get in to Louisville. Certainly if they can haul freight from Ashland to Louisville, a distance of two hundred and eight miles, for eighteen cents (18c) they can haul it from Ashland to Frankfort, a distance of one hundred and fifty-three miles, and over the same line of road for the same price.

A great deal of stress was laid in statement and proof upon the condition of the grades on the Lexington Division of the Chesapeake & Ohio and the cost of transportation thereon, and that was urged as a reason why the rate from Ashland to Frankfort via Lexington is reasonable, but it must be borne in mind that in hauling it to Louisville for eighteen cents (18c) it is hauled up the same grades and over the same hills that it is hauled to Frankfort, and is taken right through Frankfort and sixty-two miles farther. No witness has yet said that there is no profit in the rate from Ashland to Louisville, and if it be profitable, which we must assume, it necessarily follows that there is an enormous profit in the rate charged to Frankfort, whether it be the thirty-four cent rate via Lexington, or the thirty cent rate via Newport. If they can haul leather from Ashland to Newport, a distance of one hundred and forty-two miles, for thirteen cents (13c) it is unfair and unjust to charge for freight from Ashland to Frankfort, only eleven miles longer haul, thirty-four cents (34c), or nearly three times as much.

But when we compare this rate with rates on leather from points outside of Kentucky to Frankfort the injustice of the rate complained of is all the more striking.

A table has been filed by complainant showing the rates charged on leather in car load lots from numerous points in the country to Frankfort, giving also the distance and the rate per ton per mile. It will be noted from this that not a rate is as high for anything like the distance as the rate complained of, and only in one instance in that entire list is the rate per ton per mile as high.

We only quote a few to compare with the rate complained of, but we invite the Commission's examination of the entire statement.

We call attention to the following:

The rate from Mineral Bluff, Georgia, to Frankfort, a distance of three hundred and eighty-four miles, is thirty-five cents (35c) per one hundred pounds, or \$.0182 per ton per mile.

The rate from St. Louis, Missouri, to Frankfort, distance of two hundred and twenty-four miles, is thirty and one-half cents (30½c) per one hundred pounds, or \$.0124 per ton per mile.

The rate from Chicago, Illinois, to Frankfort, a distance of three hundred and ninety-one miles, is thirty-one cents (31c), or \$.0158 per ton per mile.

The rate from Milwaukee, Wisconsin, to Frankfort, a distance of four hundred and forty-two miles, is thirty-four cents (34c) per one hundred pounds, the same as from Ashland to Frankfort, but only \$.1063 per ton per mile.

The rate from Grand Rapids, Michigan, to Frankfort, a distance of five hundred and fifteen miles, is only thirty-three cents (33c), or \$.0163 per ton per mile.

And from Indianapolis, Indiana, a distance of two hundred and thirty-two miles, the rate is twenty-six and one half cents (26½c), or \$.0228 per ton per mile.

And from Corry, Pennsylvania, a tannery city, and with which complainant comes in active competition in its sales at Frankfort, for a distance of five hundred and five miles, the rate is only thirty-one cents (31c), or \$.0122 per ton per mile, as shown on table filed by complainant. However, it was testified by Mr. Compton that the rate is thirty-four cents (34c) and the distance approximately three hundred and forty miles, or .02 cents per ton per mile, or only one-half the percentage from Ashland to Frankfort, but if we examine the railway guide we find that from Corry, Pennsylvania, to Cincinnati, Ohio, by the most direct route, to-wit, the Erie, the distance is three hundred and ninety-nine miles, and from Cincinnati to Frankfort by the most direct route is one hundred and seven miles, making a total distance of five hundred and six miles, and the verity of the statement filed by complainant is thus demonstrated. Taking, therefore, the distance of five hundred and six miles and the rate at thirty-four cents (34c), as testified by Mr. Compton, and the rate per ton per mile is .013 cents, or less than one-third what it is from Ashland to Frankfort.

Now compare these rates with that complained of, of thirty-four cents (34c) for one hundred and fifty-three miles, or .044 cents per

ton per mile, and we can be but overwhelmed with the conviction that it is unfair and unjust.

These same roads haul this freight from Ashland, Kentucky, via Newport to Frankfort, a distance of two hundred and eighty miles, for thirty cents (30c), or \$.0214 per ton per mile. Applying this same rate per mile via Lexington and it would be Three and 27/100 dollars (\$3.27) per ton, or sixteen cents (16c) per one hundred pounds.

But the defendants say that they charge their locals from Ashland to Lexington twenty-one cents (21c), and from Lexington to Frankfort thirteen cents (13c), and that these are reasonable.

Assuming for the present that they have a right to combine locals to make this rate, let us see if, by comparison, they are reasonable.

The Chesapeake & Ohio charge from Ashland to Lexington, one hundred and twenty-four miles, twenty-one cents (21c).

It charges from Ashland to Newport, one hundred and forty-two miles, only thirteen cents (13c).

It charges from Ashland to Chicago, delivering to connecting carrier at Cincinnati, twenty-one cents (21c), a distance of four hundred and forty-six miles; and we are advised that this leather can be, and has been, shipped by complainant from Ashland to Chicago through Lexington, Frankfort and via Louisville to Chicago for the rate of twenty-one cents (21c).

The Louisville & Nashville charges from Lexington to Frankfort, twenty-nine miles, thirteen cents (13c), or \$.07 per ton per mile.

It charges from Louisville to Frankfort, a distance of sixty-two miles, thirteen cents (13c), or \$.0148 per ton per mile.

The Chesapeake & Ohio charges more for hauling to Lexington, one hundred and twenty-four miles, than both roads charge for hauling to Louisville, two hundred and fifteen miles, and we, therefore, submit that these locals are unjust.

We could ship our leather from Ashland to Louisville and back to Frankfort cheaper than we can ship it to Frankfort via Lexington.

For instance:

|   |       |
|---|-------|
| The rate from Ashland to Louisville via Lexington and over these high grades complained of is ----- | 18c   |
| The rate from Louisville to Frankfort via L. & N. is-----   | 13c   |
| <hr/>   | <hr/> |
| Total -----   | 31c   |
| The rate from Ashland to Frankfort via Lexington is-----  | 34c   |
|   | <hr/> |

However, defendants undertake to justify the rate from Ashland to Frankfort when compared with the rate to Louisville by saying that it is because of river competition, and at the same time admit that they have river competition at Frankfort, as stated by Mr. Compton to be an active river competition. (Page 41 of record.)

Now, if they justify their rate to Louisville by river competition, surely they can not justify an almost double rate to Frankfort which has also river competition.

But they say they can handle the freight cheaper by hauling it to Louisville because of the through haul and means of distribution, but, as said before, that is more than offset by the additional haul of sixty-two miles and surely does not justify the excess charge of sixteen cents (16c) per one hundred pounds.

Defendants contend that the mileage is not to be seriously taken into account in comparing rates, but the table filed by complainant shows that even for the short hauls shown therein the rate per ton per mile is not as great as that from Ashland to Frankfort.

Defendant, Chesapeake and Ohio Railway Company, disregarding the fact that it carries this freight to Louisville over the same line of railroad for eighteen cents (18c) attempts to justify this rate of thirty-four cents (34c) by showing that because of the heavy grades on the Lexington Division that the cost of transportation is much heavier than on the Cincinnati Division, and therefore it is justified in charging twenty-one cents (21c) from Ashland to Lexington.

As shown above the rate on leather from Ashland to Louisville, two hundred and fifteen miles, is eighteen cents (18c), or .0167 cents per ton per mile. This is a profitable rate over this same line of road

with the same percentage of operating expenses, and if this same rate per ton per mile is applied from Ashland to Lexington, one hundred and twenty-four miles, the rate would be two and 07/100 dollars (2.07) per ton or ten cents (10c) per one hundred pounds, instead of twenty-one cents (21c) as charged.

And even should we concede the contention that on shorter haul the rate per ton per mile should be greater, yet there is no way to justify so much difference as appears in these rates over the same line of road.

In considering the statement of the witness with reference to the percentage of the cost of transportation, it must be borne in mind that this is not a proceeding for a readjustment of all the rates on this line, but only upon this particular commodity between these points, which is shown to be excessive, and further that the percentage Mr. Hotchkiss gives includes passenger traffic, and it is well known that there is a large passenger traffic on the Cincinnati Division.

As to the local rate of thirteen cents (13c) from Lexington to Frankfort there is no showing of the percentage of operating expenses, the same reasoning that demonstrates the unreasonableness of the twenty-one cent rate to Lexington, but more forcibly demonstrates the unreasonableness of the thirteen cent rate from Lexington to Frankfort.

The position is taken by defendants that we have no right to complain because our rate is as low or lower than that from points that ship leather into Frankfort, and that this rate permitted us to ship twenty-two cars there last year, and that Corry, Pennsylvania, from which twenty-five cars were shipped was thirty-four cents (34c) according to Mr. Compton, and thirty-one cents (31c) by showing filed by complainant; that because the rate from Ashland is as low as that that we have no right to complain.

The distance from Corry, Pennsylvania, to Frankfort, as shown above, is five hundred and six miles.

The distance from Ashland to Frankfort, as shown above, is one hundred and fifty-three miles.

Now Frankfort may be considered in a territory contiguous to Ashland. It is not in a territory contiguous to Corry, Pennsylvania. We have a right to demand that we be permitted to put our product into points in contiguous territory at a less rate than points five hundred miles away.

Corry, Pennsylvania, has its points, of course, within a radius of one hundred and fifty to two hundred miles where it has the benefit of a less freight rate, and if it has that advantage it can then come to Frankfort and sell leather and pay the transportation in competition with our local plants that are handicapped by the same freight rate.

It is argued that we have no right to complain because we shipped twenty-two out of the seventy-one cars that went to Frankfort, but if we do, it is at the sacrifice of a legitimate profit to ourselves, or an increased cost to the purchaser.

Mr. Hotchkiss frankly admits that the reasonableness of a rate is based upon what the traffic would stand. That is, in other words, the highest they can get and move the product. And Mr. Hotchkiss further says (page 33 of record) that the rate charged *is the highest* rate the C. & O. could charge reasonably upon the traffic.

But defendants will say that we direct our comparison alone to the thirty-four cent rate, and not to the thirty cent rate via Newport, but we insist that we have the right to have a reasonable rate fixed to Frankfort by the most direct route. While we insist that we have a right to have the freight go by the most direct route, the question of the directness of the route is not so material, but the rate is. We ship the longer route because the rate is cheaper. And when we come and ask a fair rate, and show a direct route for hauling it, it is no answer to the contention to say that they give a cheaper rate by a longer route, and that by the longer route the rate is reasonable and we ought not to complain. In other words, they will say that we haul your product from Ashland to Newport, one hundred and forty-three miles; Newport to LaGrange and LaGrange to Frankfort, one hundred and twenty-one miles, a distance of two hundred and sixty-four miles, and taking that distance argue that it is a reasonable rate.

But we have the right to demand to have the rate fixed with reference to the shortest and most direct route, and then if the carrier chooses to haul it the longer route, and the delay does not effect the shippers or consignee, no one can complain. But we do insist that both thirty-four cents (34c) and thirty cents (30c) is an unreasonable rate for transporting leather from Ashland to Frankfort.

Mr. Compton undertook in his testimony to illustrate the reasonableness of the rate of thirteen cents (13c) from Lexington to Frankfort by showing that a car load of leather is worth eighty-four hundred dollars (\$8,400); that the company for transporting this car load of



leather from Lexington to Frankfort, twenty-nine miles, gets thirty-one and 20/100 Dollars (\$31.20), and the cost of service is 37/100 of one per cent of the value of the property, and that taking the hazard into consideration the rate was very reasonable.

Now, we invite the Commission's attention to this statement while we compare it with the other rates and demonstrate, as we believe it does beyond question, that the rate complained of is excessive.

It is admitted by Mr. Compton (page 48 of record) that the longer the haul the greater the hazard, and indeed that is a matter of common knowledge. Whatever may be said against the use of the mileage in calculating the rate the same can not apply to the hazard, for it goes without question that for every additional mile the freight is hauled the hazard is that much greater; the freight is in charge of the carrier that much longer; there is just that much more of track to endanger the safety of the carriage, and so it may reasonably be said, even without the support of the admission of Mr. Compton, that in a haul of one hundred miles the hazard is four times as great as in a haul of twenty-five miles.

The fallacy of the position that because the cost is only 37/100 of one per cent of the value the rate is reasonable is we feel clearly shown by the following comparisons:

|                           | Rate<br>Per Cwt. | Distance  | Per<br>Carload | Per Ton<br>Per Mile |
|---------------------------|------------------|-----------|----------------|---------------------|
| Lexington to Frankfort..  | 13c              | 29 miles  | \$31.20        | .0037               |
| Louisville to Frankfort.. | 13c              | 62 miles  | 31.20          | .0037               |
| Ashland to Newport.....   | 13c              | 143 miles | 31.20          | .0037               |

So it appears from above comparison that for hauling this eighty-four hundred dollars (\$8,400) worth of leather from Lexington to Frankfort, twenty-nine miles, the Louisville & Nashville Railroad Company charges thirty-one and 20/100 dollars (\$31.20), or 37/100 of one per cent of its value, and for hauling it from Louisville to Frankfort, sixty-two miles, or twice as far and with twice the hazard it only charges the same amount per car and the same percentage of its value. So if the rate from Louisville to Frankfort is reasonable and the hazard and percentages of value are to be considered as a basis the rate from Lexington to Frankfort should only be six and one-half cents (6½c).

But for the same amount per car the same percentage of value the Chesapeake & Ohio Railway Company hauls this same eighty-four hundred dollar car of leather from Ashland to Newport, one hundred and forty-three miles; hauls it five times as far; over five times as much track, and has its custody for five times as long. So if that is a reasonable rate and the hazard and percentages of values are to be considered as a basis, then the rate from Lexington to Frankfort, twenty-nine miles, should be one-fifth of thirteen cents (13c.) or two and three-fifth cents (2 3-5c).

But we will carry the comparison still further.

|                         | Rate<br>Per Cwt. | Distance  | Per<br>Carload | Per Ton<br>Per Mile |
|-------------------------|------------------|-----------|----------------|---------------------|
| Ashland to Lexington--- | 21c              | 124 miles | \$50.40        | .006                |
| Ashland to Chicago----- | 21c              | 446 miles | 50.40          | .006                |

The distance is three and one-half times as far; the hazard three and one-half times as great from Ashland to Chicago as from Ashland to Lexington, and yet the cost per car and the percentage of value is the same. So if this is to be taken as the basis, then the Chesapeake & Ohio Railway Company are charging three and one-half times as much as they ought to charge from Ashland to Lexington.

Along this line we beg to submit another comparison as follows:

|                            | Rate<br>Per Cwt. | Distance  | Per<br>Carload | Per Ton<br>Per Mile |
|----------------------------|------------------|-----------|----------------|---------------------|
| Ashland to Frankfort---    | 34c              | 153 miles | \$81.60        | .0097               |
| Corry, Pa., to Frankfort-- | 34c              | 506 miles | 81.60          | .0097               |

So it is seen that for hauling this same value of leather a distance of one hundred and fifty-three miles the same charge is made and the same percentage of value as for hauling it five hundred and six miles.

But it may be argued that for hauling over this particular road the hazard is greater, though same is not justified by the record, but

we can make the same comparison over the same line of road, as follows :

|                           | Rate<br>Per Cwt. | Distance  | Per<br>Carload | Per Ton<br>Per Mile |
|---------------------------|------------------|-----------|----------------|---------------------|
| Ashland to Lexington----  | 21c              | 124 miles | \$50.40        | .006                |
| Lexington to Frankfort--  | 13c              | 29 miles  | 31.20          | .0037               |
| Ashland to Frankfort----  | 34c              | 153 miles | 81.60          | .0097               |
| Ashland to Louisville---- | 18c              | 208 miles | 43.20          | .0051               |

The price per car and percentage of value from Ashland to Louisville, two hundred and eight miles, is less than from Ashland to Lexington, one hundred and twenty-four miles; less than from Ashland to Frankfort, one hundred and fifty-three miles, and only slightly greater than from Lexington to Frankfort, twenty-nine miles, though the distance is seven times as great.

Now the defendant companies haul this same eighty-four hundred dollar car of leather over the same tracks, for the greater distance, and therefore greater hazard, of two hundred and eight miles, for less percentage of value than they haul it either to Lexington, one hundred and twenty-four miles, or to Frankfort, one hundred and fifty-three miles.

We submit that the position taken by defendants to show the reasonableness of the rate in question demonstrates its unreasonableness.

It is contended for defendants that the Commission has no power to fix a through rate between Ashland and Frankfort, because of the terms of the existing contract between Chesapeake & Ohio Railway Company and Louisville & Nashville Railroad Company; but a contract similar to this one has been heretofore construed by the Commission in the case of Adkins Coal Company vs. Ashland Coal and Iron Railway Company, and is found on page 86 of the report of 1906, and which has been quoted heretofore in these proceedings.

In that case, which is similar to this, the Commission established rates from points on Ashland Coal & Iron Railway Company to points on the Chesapeake & Ohio Railway Company, and left it to the companies to make the division between themselves.

In behalf of the complainant we most respectfully ask that either;

(1) A reasonable through rate be fixed from Ashland to Frankfort, or,

(2) That the locals be so reduced that the combinations will afford a reasonable rate.

We want nothing but what is fair and reasonable. We feel that the rate we are compelled to pay is unfair, unjust, and extortionate, and so shown by this record, and upon that we most respectfully ask the judgment of this Commission.

(Signed)

MALIN & MALIN,  
*Attorneys for Complainant.*

BRIEF FOR DEFENDANT, CHESAPEAKE & OHIO RY. CO.

We desire particularly to direct the attention of the Commission to this fact: that although the charge for transporting leather from Ashland to Frankfort via Lexington is spoken of as a rate of 34c, the question before the Commission is not whether a 34c rate is reasonable, but whether either the C. & O. rate of 21c from Ashland to Lexington or the L. & N. rate 13c from Lexington to Frankfort (which added together make up the total charge 34c), is an unreasonable or extortionate one, and this question must be determined as a distinct and separate one as to each of the defendants. The C. & O. has no right under its contract with the L. & N. to either take on freight at Frankfort or make deliveries of freight at that point. If a shipment, therefore, moving from Ashland to Frankfort is to come via Lexington it can only be hauled by the C. & O. as far as Lexington, and it must there be delivered to some connecting carrier to complete the transportation to Frankfort. As far, then, as the C. & O. is concerned, the question as to it is not whether the aggregate of the charges from Ashland to Frankfort is reasonable or unreasonable, but whether its own rate of 21c from Ashland to Lexington is a reasonable one. This commission has no power to fix a through rate, because if it were to attempt to do so it could not compel, between the two companies affected by it, an adjustment of their respective proportions of the total charge. This Commission can, therefore, in this proceeding determine only what is a reasonable rate to be charged by the C. & O. for the transportation over its line from Ashland to Lexington, and what is a reasonable rate to be charged by the L. & N. for the transportation over its line from Lexington to Frankfort.

Representing the C. & O., therefore, we have nothing to do with the matter of the L. & N. rate of 13c from Lexington to Frankfort. Our only inquiry is whether the rate of 21c per hundred pounds charged by the C. & O. for all articles of the 4th class in its general classification is an unreasonable or extortionate one, and in the prosecution of this inquiry it must be borne in mind that the burden is not upon us to show that the rate is reasonable, but it is upon the complainant to show that it is an unreasonable one.

The complainant attempts to carry this burden, both so far as its proof is concerned and so far as the argument made by its counsel is concerned, in one way only, by comparing the distance from Ashland to Lexington with other distances and practically asking this Commission to determine that the question of the propriety of a given rate for transportation for a given distance should be determined by the rule of three. This, for instance, is the line of argument: The distance from Ashland to Newport is 141 miles, for the transportation over which a rate of 13c is charged on commodities of the 4th class. If 13c be a proper charge for such transportation for a distance of 141 miles then the rate to be charged for transportation of 124 miles should be such proportion of 13c as 124 bears to 141.

The Commission knows that the matter of distance is in many respects the most inconsequential factor in the fixing of rates, or the determination of their reasonableness or unreasonableness. When, therefore, a complainant upon whom rests the burden of proof to establish the charge of unreasonableness attempts to do so by the introduction of no other consideration than a comparison of the given rate with other rates over the same distance, leaving out of view entirely the most important factor in the problem, and resting his case upon evidence which is from its very nature insufficient to support the conclusion sought to be drawn, there is a clear case of a failure of proof, and we submit that upon the complainant's own showing, therefore, it has wholly failed to make out its charge.

The defendant has not, however, contented itself merely with pointing out the insufficiency of the plaintiff's evidence, but has introduced its General Freight Agent, Mr. Hotchkiss, and established by him certain facts which are of supreme importance in the right decision of the question before the Commission, and Mr. Hotchkiss' testimony as to these facts is not even attempted to be contradicted in any way.

The argument embraced in his testimony before the Commission,

is, we submit, absolutely conclusive, and we do not know that anything new can be now urged beyond what was suggested in the oral discussion at the last meeting and in the conclusive presentation of the matter that was made by Mr. Hotchkiss.

It may, however, be of assistance to the Commission to recall to its attention these significant facts:

When this Commission had before it the matter of fixing maximum rates to be charged by the railways in Kentucky practically no scaling down or correction was made in the C. & O. rates, but these rates were, in effect, made the basis to which those of other railways were required to conform. This 4th class rate now under consideration was at that time in effect.

The 4th class rate now under consideration and upon which is based the charge of 21c per 100 pounds from Ashland to Lexington is a uniform rate in force over the whole C. & O. system in Kentucky, West Virginia and Virginia, and, as Mr. Hotchkiss points out, is a lower rate than that authorized to be charged by the Virginia Corporation Commission. Under the classification leather is a 4th class commodity. There is no reason why a change in the rate should be made for leather which would not equally apply to many other commodities of the same class, and a decision, therefore, by this Commission that there should be a less rate for the transportation from Ashland to Lexington would involve a necessary incongruity in the whole system of rates.

In saying that the rate in question is the uniform 4th class rate over the C. & O. system we except, of course, the two instances shown by the testimony in this case, viz.: The 13c rate from Ashland to Newport and the 18c rate from Ashland to Louisville via Lexington.

The C. & O. has a right to make freight deliveries at Louisville, and it is a great terminal point and the ultimate destination of much through freight from the seaboard. It meets at Louisville great competition not only from other railroads, but also from the river, and a rate from points east of Lexington to Louisville which might be reasonable in view of traffic conditions, might be wholly unreasonable between two points upon a very much shorter line, where the traffic is local and handled under wholly different conditions, both as respects competition and railroad transportation.

The same observation will in large part apply to the Newport rate, coupled with the additional consideration that even as to merely local

traffic on the line from Ashland to Newport the conditions, without reference to the question of competition, favor a lower rate. As shown by the profile filed with the Commission, the grades on that line are wholly in favor of the traffic, as it is practically level.

When conditions on the E. L. & B. S. between Ashland and Lexington are compared with the conditions on the Cincinnati Division we find the widest dissimilarities, some of which the Commission will recall, as follows:

1. The grades on the E. L. & B. S. are exceptionally difficult. As shown by the testimony of Mr. Hotchkiss (Tr., p. 24), the maximum tonnage which can be hauled on the Lexington District is 1,100, while from 3,000 to 4,000 is the maximum on the Cincinnati Division; in other words, an engine can haul between 3 and 4 times as much on the Cincinnati Division as on the Lexington District, and even with the above maximum on the Lexington District the service of a helper engine is required on the Corry Hill grade for about five miles on one side of the summit and about four miles on the other.

2. The Kentucky C. & O. System is divided into two divisions; the Cincinnati Division comprising the line from Russell (near Ashland) to Cincinnati, and the Lexington comprising the line from Ashland to Lexington, known as the Lexington District (the trackage rights over the L. & N. between Lexington and Louisville, known as the Louisville District) and the line up the Big Sandy river, known as the Big Sandy District. Now as regards "density of traffic," *i. e.*, quantity or frequency of traffic, the Lexington District has very much the lightest, falling behind the Big Sandy District considerably in this respect and its density being less than one-third of that on the Cincinnati Division. The amount or quantity of traffic furnished by a given territory is a most important factor in determining a profitable rate of local transportation through that territory.

3. The cost of operation is another important factor. Mr. Hotchkiss has furnished information as to this on pages 22 and 30 of the transcript. It will be seen that he takes his figures from the cost of operation for the year 1908, which is probably the minimum, as every effort was made by railway companies during that year, by cutting off expenses in every direction, to reduce the cost of operation to the lowest point. Based upon the figures for that year it will be seen that for the nine months ending March 31st of this year the cost of operation on the Cincinnati Division was 51 per cent of the gross earn-

ings, while for the same period on the Ashland Division it was 86 per cent. It will be recalled, however, that the Ashland Division is made up of the Lexington District (the L. & N. trackage rights) and the Big Sandy District, and that the cost of operation, in view of the matter of grades and the density of traffic, is very much lower upon the Big Sandy District than upon the Lexington District. In point of fact it is the judgment of Mr. Hotchkiss, from the best information which he can obtain, that so far as merely local traffic on the Lexington District is concerned, that is traffic which is hauled by the C. & O. solely between points on that District, the cost of operation is over 100 per cent. This means, of course, that, considered as an independent line, it would have to be operated at a loss under the most favorable conditions. In view of this consideration alone we submit it is somewhat remarkable that the company has felt justified in maintaining as to local traffic on this particular line merely the average rate which is charged over its whole system. There is no known principle of fixing rates which would not justify it in charging as to local traffic on this line a higher rate than this.

4. In view of the foregoing facts Mr. Hotchkiss does not hesitate to say (Tr. p. 30) that a given volume of traffic at a rate of 13c from Ashland to Newport would yield more profit than the same volume from Ashland to Lexington at 21c.

5. Now the 13c rate from Ashland to Newport being confessedly a low one, and one which we believe this Commission has said ought not to be taken as a basis for other rates, how can it be claimed that a local rate on the Lexington District, which, according to the uncontradicted testimony of Mr. Hotchkiss, would yield a smaller profit than the 13c rate on the Cincinnati Division, is an unreasonable or extortionate one?

We have attempted merely to summarize a few of the salient points developed by the testimony of Mr. Hotchkiss, and earnestly trust that the Commission will not take this meager summary as a substitute for a careful examination of the report of his testimony, which affords a luminous exposition of the reasons why the Company is justified in maintaining the charge of 21c per hundred pounds from Ashland to Lexington.

The Commission is earnestly requested to consider the further fact that the complainant has no real grievance here. It is doing a large part of the leather business at Frankfort, and gets to that locality



at a less rate than any of its competitive points, except Cincinnati and Louisville, and although both of these points have a less rate to pay in order to get leather into Frankfort they both together do only a fraction of the quantity of business in leather which is done by the complainant at Frankfort. As was repeatedly emphasized at the hearing, the complainant is already able to get into Frankfort at an aggregate charge of 30c per 100 pounds, viz.: 13c over the C. & O. to Newport, and 17c over the L. & N. from Newport to Frankfort. It is practically as quick transportation by that route as could be secured via Lexington. The sole ground upon which it is sought to make the defendant change its rate from Ashland to Lexington is for the reason that measured by miles the distance is shorter, and the complainant, therefore, conceives that, the distance being shorter, the rate ought to be proportionately less. It would make no difference to it whether its product went to Frankfort via Lexington or via Newport if the rate were the same. The traffic, however, moves freely upon the rate now obtaining, and until it can be shown that a less rate could be fixed by this Commission without doing substantial injustice to the carrier no reason is established for the change.

We insist:

1. That the complainant, upon whom rests the burden of proof to show the unreasonableness of the 21c rate from Ashland to Lexington, has failed upon the testimony adduced before the Commission to make out a case justifying its claim of unreasonableness; the only evidence adduced in support of its position being a comparison of the distance from Ashland to Lexington with other distances over which different rates obtain.
2. That the defendant has shown affirmatively, by a consideration of the various factors which enter into the question of the fixing of rates, that its charge for the transportation of commodities of the fourth class is a reasonable and proper one.

It is respectfully submitted that the complaint should be dismissed.

(Signed)

SHELBY & SHELBY,

*For C. & O. Ry. Co.*

BRIEF FOR THE DEFENDANT LOUISVILLE & NASHVILLE  
RAILROAD COMPANY.

This is a complaint wherein the rate charged for the transportation of leather, in carload lots, from Ashland, Ky., to Frankfort, Ky., is attacked.

The complainant herein is a corporation having its principal place of business at Ashland, Ky., and is engaged in the manufacture and shipping of sole leather.

The complaint was filed February 27, 1909. The first hearing took place at Frankfort on May 5, 1909, at which time the complainant's testimony was introduced. At the second hearing on June 1, 1909, the defendant's testimony was taken.

The complainant avers that in supplying its customers at Frankfort, Ky., it is necessary for it to, and it does, ship a large amount of leather from Ashland to Frankfort; that the freight rate charged said complainant for the transportation of said leather, in carload lots, from Ashland, Ky., to Frankfort, Ky., is 34 cents per one hundred pounds; that said rate is extortionate, excessive, unreasonable and unjust, and that the rate so charged is a higher rate than is charged for the transportation of similar freight under substantially similar circumstances and conditions from Ashland, Ky., to Louisville, Ky., which is in the same direction, over the same line, and a longer distance than from Ashland, Ky., to Frankfort, Ky., and that the distance from Ashland, Ky., to Frankfort, Ky., is included in the distance from Ashland, Ky., to Louisville, Ky.

The Louisville & Nashville Railroad Company filed its separate answer wherein it admits that it participates as a connecting carrier in the transportation of leather in carloads from Ashland, Ky., to Frankfort, Ky., but avers that its proportions of the rate charged for the transportation of leather in carloads from Ashland to Frankfort are 13 cents per hundred pounds via Lexington and 17 cents per hundred pounds via Newport, Ky., respectively.

Defendant denies that its rates of 13 cents per hundred pounds from Lexington, Ky., to Frankfort, Ky., and 17 cents per hundred pounds from Newport, Ky., to Frankfort, Ky., charged for the transportation of leather in carloads, are extortionate, excessive, unreasonable or unjust.

Defendant further denies that its proportions of the rate charged

on leather in carloads from Ashland to Frankfort are higher than is charged for the transportation of similar freight under substantially similar circumstances and conditions from either Lexington, Ky., or Newport, Ky., to Frankfort, or between other points within the State of Kentucky.

The Louisville & Nashville Railroad Company filed an amended answer setting up the fact that the rate of 34 cents per hundred charged for the transportation of carload lots of leather is what is known as a "combination rate," that under the contract by which the C. & O. Ry. Co. secured trackage rights over this defendant's line from Lexington to Louisville, the said C. & O. Ry. Co. does not transport or deliver freight to the City of Frankfort, *and that there is no joint rate or joint through rate established to the said City of Frankfort from the said City of Ashland on this commodity.*

#### THE FACTS.

The complaint, in a general way, attacks the reasonableness of the 34-cent rate on leather, in carloads, from Ashland to Frankfort.

A combination rate applies in the absence of a joint through rate.

There are no joint through rates published applicable on leather from Ashland to Frankfort. In the absence of through rates the lowest combination of rates, made on the available basing points, called a combination rate, applies.

This combination rate of 34 cents per one hundred pounds is made up of the sum of the local rate of 21 cents, from Ashland to Lexington, and 13 cents from Frankfort to Lexington.

The available basing points applicable to shipments of leather from Ashland to Frankfort are as follows:

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| Via Winchester. | Via Maysville.  | Via Cincinnati. |
| 19c C. & O.     | 18c C. & O.     | 13c C. & O.     |
| 23c L. & N.     | 27c L. & N.     | 17c L. & N.     |
| <hr/> 42c       | <hr/> 45c       | <hr/> 30c       |
| Via Lexington.  | Via Louisville. | Via Newport.    |
| 21c C. & O.     | 18c C. & O.     | 21c C. & O.     |
| 13c L. & N.     | 13c L. & N.     | 17c L. & N.     |
| <hr/> 34c       | <hr/> 31c       | <hr/> 38c       |

From the above tables it will be noted that the lowest combination makes a rate on Cincinnati basis of 30 cents per one hundred pounds. The factors entering into this combination are, a rate of 13 cents per one hundred pounds from Ashland to Cincinnati and a rate of 17 cents per one hundred pounds from Cincinnati, O., or Newport, Ky., to Frankfort, the 13-cent rate being published by the C. & O. Ry. and the 17-cent rate being published by the L. & N. R. R. Co.

It would appear from reading the complaint that these shipments of leather have uniformly moved from Ashland to Frankfort on a rate of 34 cents per one hundred pounds, which is the combination rate applicable on shipments routed via Lexington; however, the larger number of these shipments of leather from Ashland to Frankfort do not move via Lexington, but via Cincinnati, where a rate of 30 cents per one hundred pounds obtains.

The Louisville & Nashville Railroad Company is not attempting to explain why the C. & O. Ry. routes shipments of leather via Lexington to Frankfort on a 34-cent rate, when a 30-cent rate is applicable via Cincinnati. The reasons for so doing are ably stated by the attorney for the C. & O. Ry. Co. in his statement before the Commission.

The Louisville & Nashville Railroad Company is concerned principally with the establishment of its part of the 34-cent rate from Ashland to Frankfort, viz.: the 13-cent rate, which is its rate for the transportation of the commodity in question from Lexington to Frankfort.

The 34-cent rate is the one complained of, and the 13-cent rate (which is part of this combination rate of 34 cents) is this Company's lawfully published rate, and which we believe to be just and reasonable, and which we shall honestly endeavor to convince this Honorable Commission is just and reasonable, and should not be reduced.

The distances and the rates covering the proportions of the 30-cent and the 34-cent rate mentioned herein, and under which rates these shipments of sole leather have moved, are as follows:

|                          |                |           |
|--------------------------|----------------|-----------|
| Ashland to Frankfort,    | 153 miles----- | 34 cents. |
| Ashland to Lexington,    | 124 miles----- | 21 cents. |
| Louisville to Frankfort, | 62 miles-----  | 13 cents. |
| Cincinnati to Frankfort, | 107 miles----- | 17 cents. |
| Ashland to Cincinnati,   | 146 miles----- | 13 cents. |
| Lexington to Frankfort,  | 29 miles-----  | 13 cents. |

The C. & O. Ry., in handling business from Ashland to Frankfort, via Louisville, is obliged to turn it over to the L. & N. R. R. Co. at Lexington because, under the terms of their contract with this Company, for the use of this Company's tracks between Lexington and Louisville, they are not privileged to handle traffic as their own from any points east of Lexington to any points between Lexington and Louisville.

The present rate on leather in carloads from Ashland to Louisville is 18 cents per one hundred pounds via Lexington, Ky. The L. & N. R. R. and the C. & O. Ry. have no joint through rates on leather in carloads from Ashland to Louisville.

#### METHOD OF BILLING SHIPMENTS OF LEATHER FROM ASHLAND TO FRANKFORT.

Carload shipments of leather destined from Ashland to Frankfort are billed to Newport and then re-billed from that point to Frankfort. There is no through line billing; and only on prepay shipments would the consignor have to pay to the initial carrier the full rate of 30 cents per hundred pounds.

#### ABSTRACT OF EVIDENCE.

##### HOW THESE RATES ARE CONSTRUCTED.

After stating the present rates, in effect on leather in carloads, from Ashland to Covington, Newport and Cincinnati, and from Covington, Newport and Cincinnati to Frankfort (which rates have been heretofore stated), Mr. C. B. Compton, Traffic Manager of the Louisville & Nashville Railroad Company, says that the measure of the rate from Ashland to Newport, Covington and Cincinnati *is the competition with the Ohio River* (Tr., p. 41). Continuing, Mr. Compton says:

"The rate from Cincinnati to Frankfort is the fourth-class rate, which has been in effect for a number of years. That rate, and other rates in the fourth class, and, in fact, all other rates from Cincinnati to Frankfort, are measured by the competition in the Ohio River via Carrollton, Ky. Those rates bear a relation to the rate from Louisville to Frankfort, and the rates from Louisville to Frankfort are made to meet active river competition." \* \* \*

"The rate from Louisville to Frankfort is 13 cents, *and is 4 cents lower than the scale of the L. & N.* The local scale of the L. & N. is departed from, because the competition in the Ohio and Kentucky rivers forces it. The fourth-class rate from Lexington to Frankfort is 13 cents, for the reason that the competition in the Ohio and Kentucky rivers has the effect of fixing a 13-cent fourth-class rate from Louisville to Frankfort, which made a less rate from Louisville to Frankfort than from Lexington to Frankfort, and Lexington being a competitive point, it was believed by our company that it was reasonable to make the rate from Lexington to Frankfort the same as from Louisville. It is true that there is no river competition between Lexington and Frankfort, but we did adopt from Lexington to Frankfort an arbitrary rate of 13 cents, fourth-class rate, which is the rate today."

#### REASONABLENESS OF THE 13-CENT RATE FROM LEXINGTON TO FRANKFORT.

In further explanation of the 13-cent rate, Mr. Compton said:

"Q. Then this 13-cent rate is 4 cents less than the fourth-class rate?

"A. Yes, sir.

"Q. What can you say as to the reasonableness of this 13-cent rate in effect from Lexington to Frankfort?

"A. In my opinion, the rate from Lexington to Frankfort of 13 cents is reasonable. *It is reasonable because it is less than the mileage scale of the L. & N.,* and because the benefit is given of the competition at Louisville, as the rate has been fixed by the Ohio and Kentucky rivers. As applied on leather in carloads, which is classified as fourth class, I consider it extremely reasonable." (Tr., p. 42.)

With further reference to the reasonableness of the rate on leather in carloads, Lexington to Frankfort, Mr. Compton said, on page 43 of the transcript of testimony:

"Leather is worth from 35 to 37 cents per pound. I use 35 cents to illustrate. Now, a carload of leather of 24,000 pounds is worth \$8,400. The transportation charge is \$31.20 from Lexington to Frankfort, via L. & N. R. R. The value of the service

to the value of the property is 37-100 of 1 per cent. I think, taking these things into consideration, that it shows conclusively that the rate is reasonable."

From a comparison of the figures above given by Mr. Compton, it will be seen, by calculation, that the ratio of the cost of transportation to the value of the property transported is 37-100 of one per cent of this distance of 29 miles. As stated by Mr. Compton, "you could not insure the property in a warehouse at that percentage of cost."

*We submit that 37-100 of one per cent is a very low percentage of earning power for any railroad under any condition, and that this one fact alone is evidence enough to establish the reasonableness of the rate in question.*

The Interstate Commerce Commission said in the case of Darling & Co., et al., vs. B. & O. R. R., et al., 15 I. C. C. Rep. 81, that the value of a commodity should be considered in determining the reasonableness of a rate.

#### AMOUNT OF LEATHER SHIPPED TO FRANKFORT IN CARLOADS FOR A PERIOD OF ONE YEAR.

Mr. Compton filed with his testimony a statement showing the amount of leather shipped to Frankfort in carloads for a period of one year from May 1, 1908, to May 1, 1909, which we show herewith as "Exhibit A." This statement shows that the number of cars received was 71, of which 25 came from Corry, Pa., and 22 from Ashland, Ky. From points where leather was shipped to Frankfort it moved at a higher rate than from Ashland, *yet Ashland enjoyed 30 per cent of the business.* This leather moved by the L. & N. Railroad, 62 cars, and by the F. & C. Railroad, 9 cars.

STATEMENT SHOWING THE RECEIPTS OF LEATHER IN  
CARLOADS AT FRANKFORT, KENTUCKY,

MAY 1, 1908, TO MAY 1, 1909.

| Point of Origin         | No. of Cars | Rate Per 100 Lbs. |
|-------------------------|-------------|-------------------|
| Corry, Pa. -----        | 25          | 34c               |
| Ashland, Ky. -----      | 22          | 30                |
| Boston, Mass. -----     | 4           | 47                |
| Fondulac, Wis. -----    | 1           | 49                |
| Louisville, Ky. -----   | 1           | 13                |
| Philadelphia, Pa. ----- | 2           | 45                |
| Kenosha, Wis. -----     | 2           | 34                |
| Brockton, Mass. -----   | 1           | 47                |
| Cincinnati, O. -----    | 5           | 17                |
| Irvington, N. J. -----  | 1           | 47                |
| St. Paul, Minn. -----   | 2           | 52                |
| Harriman, Tenn. -----   | 2           | 38                |
| Hartford, Conn. -----   | 1           | 47                |
| Rome, Ga. -----         | 1           | 50                |
| Benecia, Cal. -----     | 1           | 115               |
| Total -----             | 71          |                   |

The statement shows the number of cars received from each point and the rate applied from each point.

It shows in grand total there were 71 cars received at Frankfort, of which 22 were from Ashland, Ky., at a rate of 30 cents per hundred pounds, and that only one car was received from Louisville and five from Cincinnati, from which points the rates to Frankfort are less than from Ashland; from all the other points the rates are higher than from Ashland.

THE ROUTE BY WHICH THE LEATHER MOVED.

In speaking of the movement of these shipments of leather on a 30-cent rate, Ashland to Frankfort, Mr. Compton said:

"The movement from Ashland was all by the L. & N., with the exception of one car; so it is not correct to state that the



short line to Frankfort over which the business moved is by way of the N. & W. and the F. & C. The business moved by the L. & N. from Ashland to Frankfort, with the exception of one car. A rate of 17 cents by lines leading from Cincinnati to Frankfort, and 13 cents beyond Cincinnati is charged. It is correct to state that from all the territory beyond the gateways the rates are made upon the sum of the rates to and from the Ohio River crossings. *Then you see Ashland enjoys a lower rate to Frankfort than these other points.* I say Ashland has a 30-cent rate, and that rate is lower than the rate from all other points which ship leather to Frankfort, with the exception of two, and those two are Louisville and Cincinnati. The total movement for those two points was six cars in twelve months, showing conclusively that the rate does not cut any figure whatever, because if it did Louisville and Cincinnati would have furnished all the business to the disadvantage of all other points." (Tr., p. 44.)

#### BASIS EMPLOYED IN CONSTRUCTING THESE RATES.

When asked as to the basis employed in constructing the rates for shipping leather from Ashland to Frankfort, Mr. Compton said:

"Q. Is this combination basis of making rates to Frankfort on leather in carload lots the same basis as is employed generally throughout the country?

"A. It is the basis usually employed in constructing rates where joint rates are not in effect. It is generally accepted as the basis for constructing such rates.

"Q. How does the L. & N. rate of 13 cents from Lexington to Frankfort, on leather, compare with the (rate for) the transportation of this commodity for similar distances on the line of the L. & N.?

"A. Less, for the reason that competition with the Kentucky and Ohio River forces it.

"Q. What is the number of the tariff governing fourth class?

"A. The tariff governing the rate of 13 cents from Lexington to Frankfort is known as Kentucky Junction Point Tariff No. 1, effective January 15, 1909, and is a reissue of previous tariff. It is I. C. C. No. 12, and is on file with the Interstate Commerce Commission and the Kentucky Railroad Commission." (Tr., p. 45.)

## NO JOINT RATE IN EFFECT.

Mr. Compton says, page 40 of the Transcript of Testimony, as follows:

"There is no through joint rate in effect from Ashland, Ky., to Frankfort, Ky. The rate from Ashland to Frankfort is constructed on the basis of the sums of two rates; the rate from Ashland to Newport, and the rate from that point to Frankfort."

VALUE OF COMMODITY A FACTOR IN FIXING THE  
TRANSPORTATION CHARGE.

When asked if the value of the article entered into the matter of fixing the transportation charge, Mr. Compton said, page 46 of Transcript of Testimony, as follows:

"Leather is classified in the classification as fourth-class in carloads. In fixing the classification, of course the value of the property is always considered."

## LOSS AND DAMAGE CLAIMS.

When asked if the claims for loss and damage would be greater to this class of merchandise (leather) than for other classes, Mr. Compton said, page 46 of Transcript of Testimony, as follows:

"Oh, yes, sir. It would take more money to pay for a carload of leather worth \$8,400 than it would for a carload of sand or coal or lumber."

NO MOVEMENT OF LEATHER FROM COLUMBUS,  
INDIANA, TO FRANKFORT.

Mr. Compton said, in regard to the statement made by complainant that Columbus, Ind., enjoyed a lower rate to Frankfort on leather than any other point, as follows:

"I desire to point out, also, Mr. Commissioner, the fact that particular stress is laid upon the rate from Columbus, Ind., *and not a single shipment has moved to Frankfort for a period of years.*"

## THESE SHIPMENTS OF LEATHER DO NOT MOVE VIA LEXINGTON.

When asked by complainant's counsel, if the L. & N. R. R. quoted a rate of 34 cents from Corry, Pa., to Frankfort, Mr. Compton said:

"A. Yes, sir.

"Q. This is the same rate as from Ashland to Frankfort by the Lexington route?

"A. NO, SIR. The business moves the other way."  
(Tr., p. 48.)

### ARGUMENT.

Now, as to the authority of the Kentucky Railroad Commission to establish joint rates; neither by the Constitution nor by Statute has this Honorable Commission the power to establish joint rates. In this one respect it may be said that the Kentucky Railroad Commission is like the Interstate Commerce Commission was before the enactment of the Amendment to the Interstate Commerce Act of June 29, 1906, which gave it the power to establish joint through rates as maximum to be charged, after hearing on complaint. Before June 29, 1906, even the Interstate Commerce Commission had not the power to establish joint rates. (11 I. C. C. Rep. 580.)

The Kentucky Railroad Commission has only such authority as is vested in it by the State Constitution and by statute, and, since there is no specific grant of authority to establish joint rates given to this Commission, by law, it is evident that it has no such authority.

This Commission held in the Veneer Lumber case, 1908 Report, and has also held in other cases, that it has not the power to establish joint rates.

Complainant's counsel, on page 4 of their brief, contends that a through rate should be applied from Ashland to Frankfort, and cites the case of *The Adkins Coal Co. vs. C. & O. Ry. and Ashland Coal & Iron Co.*, 27 K. R. C. Rep. 86. We do not think that the words used by the Commission in that case, viz.: "joint interest in the use of the property," can be construed as meaning that there was an express agreement between the carriers as to the making of a joint through rate, but if this Commission did decide the above case with this idea in view, then they exceed the authority vested in them by this

Commonwealth, and their decision is of no effect, as they did not then have, and do not now have, the authority to make joint rates.

A joint rate is a rate over a through route, every part of which has been made by express agreement between the carriers making the through route (12 I. C. C. Rep. 163-165.) The Interstate Commerce Commission also said in the case, *supra*, as follows:

"If, however, no through rate has been formed, then the shipment will move, not upon one through journey, but upon a succession of journeys, and will be subject to any change in rates made by any carrier into whose possession the shipment has not been received."

### SELFISH MOTIVE OF COMPLAINANT.

We are enclined to think that a selfish motive prompts the complainant in his endeavor to obtain a lower rate on shipments of sole leather to Frankfort. Mr. Shaut says, page 12 of complainant's testimony, that he thinks a reduction would increase his business at Frankfort. As shown by exhibit filed by Mr. C. B. Compton, the complainant is shipping the great bulk of the leather which is received at Frankfort; but this complainant is not satisfied with the volume of business it is doing and is now seeking to increase its business in Frankfort at the expense of the two railroad companies who are defendants herein. In regard to maintaining a profit to manufacturers, the Interstate Commerce Commission said, in *Thurber, et al., vs. N. Y. C. & H. R. R. Co.*, 3 I. C. C. 473, 502, as follows:

"The theory of an adjustment of rates to preserve a commercial profit to manufacturers and jobbers in all cases, if accepted as a necessary rule under the law, would mean that the carrier would be required in many cases to carry for less than cost. Such a rule can not, therefore, be accepted as one of general application."

### EFFECT OF A REDUCTION IN THE EXISTING RATES ON LEATHER IN CARLOADS, LEXINGTON TO FRANKFORT.

To reduce the rates on car load shipments of sole leather between the points in question would mean that the Louisville & Nashville Railroad Company would suffer a needless reduction of its earn-

ings on this business which would work a great hardship on the Company, as the rate is now as low as the traffic can reasonably stand.

If the rate in question were reduced it would benefit Ashland people only temporarily because complaints from other points on this road would be made asking for a reduction of their rate. This Company would want to put such other points on an equality with their competitors, and would necessarily be compelled to reduce the rates; therefore, the same competitive conditions would then exist as now exist, the railroad being the party to suffer. We submit that the facts do not warrant a reduction of the rate which this Company has in effect on leather in carloads.

The contention of L. & N. R. R. Co. that the present rate of 13 cents per hundred pounds on leather in carloads, from Lexington to Frankfort, is just and reasonable *per se*.

The main fact at issue in this case, so far as this Company is concerned, is the reasonableness of the 13-cent rate on leather, in carloads, from Lexington to Frankfort, as that rate represents our part of the combination rate of 34 cents per hundred pounds, which is attacked by the complainant herein.

There are many things entering into the consideration of the reasonableness of a rate, viz.: comparison with rates on commodities of a similar class or nature handled under substantially similar circumstances and conditions; effect of river competition; cost of transportation; value of commodity transported; length of time given rate has been in effect; its relation to other rates of the same class; per cent. of earning on the value of commodity transported; and under certain conditions, the distance scale may be taken into consideration; however, the distance the commodity is shipped is by no means a controlling factor in determining the reasonableness of the rate. *I. C. C. vs. C. G. W. R. Co., et al.*, 141 Fed. Rep. 1003. This is especially true of the exhibit filed by the complainant, which shows distances that do not, by any means, determine of themselves the reasonableness of the rate in question.

The principle primarily underlying the classification of rates is the endeavor to apply, to each of the articles transported, that rate which it should equitably pay.

In the Matter of Proposed Advance in Freight Rates, 9 I. C. C. Rep. 395, the Commission said:

"Carriers are entitled to charge a reasonable compensation for their services. Except in unusual cases no rate is reasonable which does not yield a fair profit upon the transaction."

In the case of L. & N. R. R. Co. vs. Railroad Commission of Florida, 123 Fed. Rept. 951, the court said:

"As long as the rates are reasonable, and do not unjustly discriminate, the company is entitled to earn an amount equal to the usual and legal rate of interest in the locality where the railroad is situated."

No fixed rule can be laid down to discriminate the reasonableness of a rate. It depends upon a number of things. It is a question of fact and each particular rate should be judged on its particular facts. Minn. & St. P. R. R. vs. Minnesota, 186 U. S. 257.

In this particular case, before the Commission, we do not think the rate of 13 cents is excessive. The rate is now as low as competition between shipping points calls for. The inevitable result of a lowering of this rate would be a needless sacrifice of this Company's revenue on this business.

This rate is not only as low as competition demands, but it is 4 cents lower than the regular fourth-class rate; therefore, this rate is four cents lower than what competition requires. This was all testified to by Mr. Compton, and we consider what he says should have your earnest consideration for he is an expert traffic official.

Mr. Compton also testified as to the very remarkably low rate of earning power on this commodity, and we think that, measured by the standard of the Florida case, *supra*, the rate is entirely too low. He also testified to the fact that this rate of 13 cents was lower than the distance scale of the L. & N. While the distance scale does not necessarily determine the reasonableness of the rate yet we call attention to that fact that this rate of 13 cents is even lower than the distance scale.

There is no more troublesome a question for a Railroad Commission to consider than the matter of the reasonableness of a rate.

Now the fact must not be lost sight of that the rates from Cincinnati to Frankfort are measured by the competition in the Ohio River and that those rates bear a relation to the rates from Louisville to Frankfort, that the rates from Louisville to Frankfort are made to meet active river competition and that the rate from Lexington to Frankfort is made the same by virtue of the fact that Lexing-

ton is an important competing point with Louisville and that on account of this competition the rate from Lexington to Frankfort is made four cents lower than the regular rate, which is 17 cents, thereby putting Lexington on a parity with Frankfort whose rates are rightly fixed by river competition and which are lower by four cents than the other fourth-class rates.

Since there is no fault to be found with the classification of which this 13-cent rate is a part, and since the 13-cent rate is four cents lower than the regular fourth-class rates, then we say there is absolutely no just reason for asking that this rate of 13 cents be lowered.

The burden of proof is upon the party making the complaint.

Holmes & Co. vs. Sou. Ry. Co., 8 I. C. C. R. 561.

I. C. Comm. vs. N., C. & St. L. Ry., 120 F. R. 934.

The rate on leather from Lexington to Frankfort has been in existence for a number of years, and has never been questioned, and the reasonableness of same is therefore presumed.

Proctor & G. Co. vs. C., H. & D. Co. *et al.*, 9 I. C. C. R. 440.

I. C. Comm. vs. C., H. & D., *et al.*, 146 Fed. 559.

The complainant now attacks the rate question and alleges that it is unreasonable, or rather that the rate from Ashland to Frankfort is unreasonable. This Commission has no authority to establish joint rates, which has been decided heretofore, and for this reason it can only inquire, so far as the L. & N. R. R. Co. is concerned, for the reasonableness of the rate from Lexington to Frankfort. If the technical rules of pleading were followed this could not be done. A complaint is made of a joint rate which can not be inquired into, and it would necessarily follow that the complaint should be dismissed; however, waiving this objection we will treat it as a complaint against the reasonableness of the local from Lexington to Frankfort. The only proof introduced by complainant is a comparison of rates, and the comparison is made of a joint rate to a local rate.

### COMPARISON OF RATES.

In judging the reasonableness of a rate, very little importance can be attached to comparisons made with rates in other sections of the country. The rates of this country are so far dependent upon

varying and diversified conditions that it is possible, by selecting the proper commodity and the proper locality, to show almost anything in the way of comparison. *Cattle Raisers' Association vs. M., K. & T. Ry., et al.*, 11 I. C. C. R. 296.

Before a comparison would be valuable, or in any way persuasive, the conditions of the routes to be compared should be shown to be substantially the same.

The courts have held that comparisons are worthless unless the conditions are shown to be the same. *I. C. C. vs. N., C. & St. L. Ry.*, 120 Fed. 934

In making the comparisons, the complainant has in no way attempted to show similarity of conditions. Very little attention is given by the Interstate Commerce Commission to the comparisons of rates, unless the conditions and circumstances are substantially similar. It is not for the carrier to prove dissimilarity. The burden of proof is upon the complainant, and, upon his failure to prove the essential elements of his comparisons, it will therefore be presumed that a dissimilarity exists, and the force of the argument to the contrary, if there was any, necessarily falls.

Mr. Drinker, in his work on Interstate Commerce, Sect. 94, says: "Comparisons are of little or no weight unless substantial similarity of conditions in the two cases be shown."

*Evans vs. Union Pacific R. Co.*, 6 I. C. C. 520.

*Memphis Frt. Bureau vs. Ft. Smith & W. R. Co.*, 13 I. C. C.

*Rhineland Co. vs. Northern Pac. R. Co.*, 13 I. C. C. 633.

The rate on leather from Lexington to Frankfort is a local rate and is less than the usual mileage scale. It is not a joint rate. It was proven by Mr. Compton, Tr. p. 32, that the goods are rebilled at Lexington. So far as the L. & N. R. R. is concerned it is a local rate, and the comparisons of a joint rate from other destinations can have no bearing.

It has been repeatedly decided by the Federal Court that a joint through rate, made by two or more connecting carriers, formed no basis for comparison with local rates of either road for part of the distance, and that neither was a proper standard by which the reasonableness of the other might be determined. *Parsons vs. Chicago & N. W. R. Co.*, 63 F. R. 93; same case reaffirmed in 167 U. S. 447.



The courts and the Interstate Commerce Commission differ from the learned attorney for complainant when he says, on page 3 of brief: "the best evidence that a shipper can have of the unreasonableness of rates is a comparison with other rates."

#### SHORTER DISTANCE RATE COMPARED WITH LONGER DISTANCE RATE.

The through rate over long routes is not a fair test of what the rate per ton per mile should be upon local divisions of that route. Railroad Commission of Ky. vs. C., N. O. & T. P. Ry., *et al*, 7 I. C. C. R. 380.

#### RATE PER TON PER MILE.

The rate per ton per mile is not the measure of a reasonable rate, since if rigidly applied it would make distance alone the gauge of charges for transportation. Farrar vs. Southern Ry. Co., 11 I. C. C. R. 640.

#### C. & O. ONE CONTINUOUS LINE.

The learned attorney for the complainant quotes from the opinion of the Kentucky Railroad Commission, in its 1906 Report, to the effect that the C. & O. Ry. Co. has leased rights over several roads, and is nothing more or less than one continuous line and one system of railroad. This is true as to the points where the C. & O. Ry. Co.'s trains stop. Under the contract between the L. & N. R. R. and the C. & O. the latter company can not stop its freight at any point between Lexington and Louisville. It can not deliver freight, and can not make a rate to any intermediate point. This agreement and lease was upheld in the case of Louisville Coal & Coke Co. vs. L. & N. R. R. and C. & O. Ry., in a lengthy and learned opinion delivered by this Commission in July, 1908.

The rate from Ashland to Louisville is fixed by competitive conditions existing in the Ohio River (as shown by our testimony, *supra*.) The C. & O. Ry. Co. has the right to carry freight to Louisville but it has not the right to carry it to Frankfort.

It will be seen from reading the complainant's brief that the general tenor of its argument is that the rate in question is too high when same is compared on a mileage scale basis such as they show.

Now while we have endeavored to show that such a mileage scale basis is not the one and only standard by which to compare

rates (but, in fact, is about the least important factor to consider in this connection), yet we feel constrained, inasmuch as this seems to be the burden of complainant's argument, to again state that there are many other factors to be contrasted with the mileage scale theory. viz.: the effect of river competition, cost of transportation, value of the commodity shipped, the length of time the rate has been in effect, its relation to other rates of the same class, etc.

It is a well-known fact in rate-making that the farther the traffic is carried, beyond a certain point, the less the rate becomes, or, in other words, as the distance increases the percentage of the rate decreases; thus it will be seen that the distance scale is not strictly adhered to in making rates.

The fact must not be lost sight of, that carriers are entitled, by law, to charge a reasonable compensation for their services, *and all other standards by which to judge a rate must be considered as secondary to this general law.*

### CONCLUSION.

In conclusion we wish to call the attention of the Commission to the fact that of all points which ship leather into Frankfort this complainant has a better rate than any of them with the exceptions of Cincinnati and Louisville, and that the total movement for those two points was six cars in 12 months, showing conclusively that the rate does not "cut any figure" to use the words of Mr. Compton (Tr. p. 44) because if it did Louisville and Cincinnati would have furnished all the business to the disadvantage of all other points.

We also want to call particular attention to the fact that this business is moving freely on a 30-cent rate via Covington and Cincinnati, and that there is no movement via Lexington on a 34-cent rate, as it might appear to a casual reader of the complaint. The complaint is so drawn as to make it appear that complainant is paying 34 cents per hundred pounds for shipping leather via Lexington, whereas they do not pay a combination rate of 34 cents, but only pay a combination rate of 30 cents per hundred on leather from Ashland to Frankfort.

We therefore ask that this defendant's rate of 13 cents per hundred pounds on leather, in carload lots, be held to be reasonable,

as all the facts tend to show that it is reasonable when judged by reasonable standards, and we further ask that the complaint be dismissed.

Respectfully submitted,  
(Signed)

WM. G. DEARING,

HOMER C. McLELLLEN.

*Attorneys for L & N. R. R. Co.*

### OPINION AND ORDER.

The question at issue in this investigation was raised by the Ashland Leather Company, a corporation at Ashland, Kentucky, engaged in the manufacture and production of leather for the markets of the world.

It is alleged that the present rate of 34c per cwt. which is now charged for the transportation of leather from Ashland, Kentucky, over the Chesapeake & Ohio Railway Company's line, to Lexington, Kentucky, and over the Louisville & Nashville Railroad Company's line from Lexington to Frankfort, is unreasonable, unjust and extortionate.

After receipt of this complaint notice was given in due form to the proper officials of the Louisville & Nashville Railroad Company, and also to complainant, and pursuant to said notice a meeting of the Commission was held on the first Wednesday in May, 1909, to hear evidence and consider said complaint. After the complainant had introduced its evidence the Commission then adjourned until June 1st, at which time the Commission assembled and heard the rest of the evidence in the case, and the argument of counsel.

The case was afterwards ably argued and presented by Mr. P. K. Malin, of Ashland, Kentucky, for complainant, and Judge John T. Shelby, Judge Wm. G. Dearing and H. C. McLellen for defendants. Many interesting points were brought out in this case. The investigation was thorough. The facts were plain and could be understood easily. The case was submitted to the Commission and the Commission having read and carefully considered all the evidence introduced, is of the opinion that the complainant, Ashland Leather Company, is entitled to relief in this case.

The Ashland Leather Company is an industry located in Ashland, Kentucky, engaged in an effort to build up a prosperous business

in this State, and it deserves that fair and unbiased treatment which is received by other industries of a like kind and character located without the State which ship their produce into the State.

The facts here are that the distance from Ashland, Kentucky, to Frankfort, Kentucky, is 152 miles over the railroads owned by these defendants, and 34c per cwt. is charged and received for hauling leather in carload lots from Ashland to Frankfort, while the same can be, and is, hauled from Ashland via Newport, Kentucky, and Louisville, Kentucky, a much greater distance, for 30c per cwt. It is also shown that a rate of 13c per cwt. on leather exists between Ashland and Newport a distance of 144 miles, while under the present arrangements the rate between Ashland and Lexington, a distance of 124 miles, is 21c per cwt. It is also in proof that the rate between Ashland and Louisville, going over the lines of these defendants, is 18c per cwt. although the distance is 62 miles greater than the distance between Ashland and Frankfort. It is also shown that the rate on leather between Ashland and Chicago, a distance of 446 miles, is 21c per cwt. Many other striking comparisons are made which show that the rate of 34c per cwt. on leather from Ashland to Frankfort is much in excess of the rates charged between other points in this country, and under practically the same circumstances.

It is argued by counsel for defendant, Chesapeake & Ohio Railway Company, that the heavy grades and the heavy cost of operating on the line between Ashland and Lexington justify this high rate. The Commission cannot agree with defendant in this opinion. While the grades may be heavy and the costs of operating high, the Commission cannot see its way clear to allow the rate on this product, as shown by the proof, for carrying it this distance.

The Ashland Leather Company, a Kentucky industry, should be encouraged rather than burdened and embarrassed; and this rate of 34c per cwt. is not only unjust and unreasonable, but is prohibitive, for the proof shows that it is not used. That being true, neither the railroads nor the complainant get any benefit from it.

The Commission thinks such a rate should be established between Ashland and Frankfort, Kentucky, over the lines of these defendants as will be in and of itself reasonable, and which can be used with profit to this complainant and to these defendants.

The Commission is of the opinion that the rate of 21c per cwt. charged from Ashland to Lexington is extortionate and should be,

and is now, hereby condemned. The Commission is also of the opinion that the rate of 13c per cwt. charged for the haul between Lexington and Frankfort is extortionate, unreasonable and unjust and should be, and is now, hereby condemned. Leather will not move from Ashland to Frankfort on a 34c rate, and the Commission is of the opinion that a rate should be established that will move leather over the defendant's lines between Ashland and Frankfort, and which would be also in and of itself reasonable.

Taking into consideration the distance between Ashland and Frankfort, the elevations in the road and the cost of its construction, as well as the general lay of the country between these two points over which these two roads run, and comparing the rates charged with the rates charged between points similarly situated in other parts of the country and on these same roads, and taking into consideration many other material points which enter into the making up of a reasonable rate, the Commission is of the opinion that 26c per cwt. is in and of itself a reasonable rate to be charged for hauling leather in carload lots from Ashland, Kentucky, to Frankfort, Kentucky.

The Commission is also of the opinion that 16c is in and of itself a reasonable rate to be charged for hauling leather in carload lots from Ashland, Kentucky, to Lexington, Kentucky; and that 10c per cwt. is in and of itself a reasonable rate to be charged for hauling leather from Lexington, Kentucky, to Frankfort, Kentucky.

It is, therefore, ordered that for the transportation of leather from Ashland Kentucky, to Frankfort, Kentucky, over the lines of the defendants there shall not be charged, collected or received by said two railroad companies, jointly, or separately, for the transportation of such leather any rate in excess of 26c per cwt.

It is further ordered that for the transportation of leather from Ashland, Kentucky, to Lexington, Kentucky, over the defendant's Chesapeake & Ohio Railway Company, line of railroad, there shall not be charged, collected or received by said Railroad Company, for the transportation of such leather, any rate in excess of 16c per cwt. in carload lots.

It is further ordered that for the transportation of leather from Lexington, Kentucky, to Frankfort, Kentucky, over the line of the Louisville & Nashville Railroad Company's railroad, there shall not

be charged, collected or received, for the transportation of leather, any rate in excess of 10c per cwt. in carload lots.

The Commission reserves the power to alter, modify or change this order. And the Secretary of the Commission is directed to mail an attested copy of this order to John T. Shelby, Attorney for the Chesapeake & Ohio Railway Company, and to Wm. G. Dearing, General Attorney for the Louisville & Nashville Railroad Company, and to P. K. Malin, Attorney for complainant. And this order shall be entered in full on the record book of this Commission, and at the expiration of ten days thereafter be in full force and effect. And should either, or both, of said Railroad Companies, or any officer, agent or employee of either, or both, thereafter charge, collect or receive a greater or higher rate, toll or compensation for the transportation of leather from Ashland, Kentucky, to Frankfort, Kentucky, than that fixed by this order, the Chairman of this Commission is directed to file a copy, or copies, of this order in a court and before a grand jury having jurisdiction over the offense, to the end that indictments may be returned and prosecutions had thereunder.

(Signed)

A. T. SILER, Chairman,  
L. P. TARLTON,  
JOHN P. HASWELL,  
*Commissioners.*

BLUE GRASS TRACTION CO-----Complainant.

*vs.*

CINCINNATI, NEW ORLEANS & TEXAS  
PACIFIC RAILWAY COMPANY-----Defendant.

J. R. MORTON, MORTON, WEBB AND WILSON, *Attorneys for Complainant.*

GALVIN & GALVIN, AND MURRAY R. HUBBARD, *Attorneys for Defendant.*

Complaint filed August 5th, 1908. Opinion and order of Commission February 5th, 1909.

1. The Blue Grass Traction Company is a standard gauge road operated by electricity.

2. "All interurban electric railroad companies authorized to construct a railroad ten or more miles in length heretofore or hereafter incorporated under the general railroad laws of this Commonwealth shall be under the same duties and responsibilities, so far as practicable, and shall have the same rights, powers and privileges as is now granted to or conferred upon railroad corporations existing, operated or incorporated under existing laws of this Commonwealth, or under laws that may hereafter be enacted." (Section 842-a, Kentucky Statutes).

3. It is the duty of defendant, Cincinnati, New Orleans & Texas Pacific Railway Company, in dealing with the defendant herein, Blue Grass Traction Company, to comply with Sections 213 and 216 of the Kentucky Constitution, the same as is required with any and all other railroad companies in Kentucky. Held—that Cincinnati, New Orleans & Texas Pacific Railway Company should,

First: Recognize the physical connection of complainant's road, Blue Grass Traction Railway, at or near defendant's station in Georgetown, Kentucky.

- Second: Inter-change freight in carload lots with complainant company.
- Third: Deliver cars loaded with freight consigned to persons residing along complainant's line of road near to and within the city of Georgetown, Ky.
- Fourth: Switch cars loaded with freight for persons living within the city of Georgetown, operating factories, to the complainant on complainant's road for delivery by complainant to such persons.
- Fifth: Upon proper demand of consignors of freight to be shipped on defendant's road, when residing on complainant's line of road, within the city of Georgetown or near thereto, deliver to the complainant cars for the purpose of being loaded with such freight at the place of business of said consignors to be thereafter delivered to defendant by complainant at defendant's station in the city of Georgetown, Kentucky.

### THE COMPLAINT.

The plaintiff, Blue Grass Traction Company, now comes and makes complaint against the defendant, Cincinnati, New Orleans & Texas Pacific Railway Company, and states that the plaintiff is a corporation duly organized under and by virtue of the laws of the Commonwealth of Kentucky, and as such is authorized to operate an electric railroad as a common carrier of passengers and freight from the city of Lexington into the city of Georgetown, in Scott county, Kentucky, and into Paris, in Bourbon county, Kentucky. The distance from Lexington to Georgetown is more than 10 miles, and the distance from Lexington to Paris, is more than 10 miles.

Plaintiff is now and for some years has been engaged in the operation of its said electric railroad, which railroad with its electric equipment is capable of supporting and transporting large freight cars of the character ordinarily used on steam lines, and employed in freight traffic on defendant's road.

The defendant is a corporation duly chartered and organized and is now and has been for some years engaged as a common carrier of passenger and freight traffic from the city of Cincinnati, Ohio,



passing through the city of Georgetown and other cities in Kentucky into the State of Tennessee.

The defendant operates a steam line of railroad, and has a station in Georgetown, Kentucky, and connected therewith the usual depot or terminal facilities. Plaintiff states that on its line of road particularly within the city of Georgetown, are located farms and manufacturing industries, the owners of which purchase and consume, handle and sell in carload lots various commodities, particularly farm products, coal and ice, shipped to and by them over defendant's road. The freight shipped to or by the farmers residing near Georgetown along the route of plaintiff's road and the freight shipped to or from the factories located along the route of plaintiff's road within the city of Georgetown, was heretofore and is now hauled in wagons to and from the defendant's station, or transferred in cars of the plaintiff to and from the defendant's said station. Plaintiff's road, under grant of franchise from the city of Georgetown, has a branch of its road, which has a physical connection with the defendant's road at or near its station in the city of Georgetown.

The plaintiff's road is so constructed, physically related to the defendant's road, and electrically equipped that it can deliver freight received from the defendant at its said station aforesaid for persons residing along its line of road, at very much less cost and expense and delay than involved in hauling said freight in wagons to said station; and the plaintiff can handle such freight at very much less cost, delay and expense to such persons if the defendant, recognizing the physical connection and relation plaintiff road sustains to the road of the defendant, would permit the cars of the defendant containing such freight to be delivered to the plaintiff for delivery along the line of its road, and would furnish cars to consignors along plaintiff's road, to be loaded at farm or factory and without break or bulk, delivered to the defendant for shipment over its road.

Greater dispatch of business and convenience in transportation would thus be obtained and the costs and expense of handling such freight greatly reduced in the transportation thereof, but the defendant has refused and still refuses to enter into any arrangements with the plaintiff by delivering to plaintiff from defendant's road the physical connection and relation of plaintiff's road with its road, the defendant has refused and still refuses to interchange business with the plaintiff by delivering to plaintiff from defendant's road

freight in carload lots; has refused and still refuses after due notice and proper application and demand to switch its cars loaded with freight on to plaintiff's track, to be delivered to the consignors thereof residing along plaintiff's line of road, and within the city of Georgetown.

The defendant insists and demands that the freight in carload lots consigned to persons living along plaintiff's road near the city of Georgetown and within the limits of said city be unloaded from wagon or defendant's cars at its station, and reloaded in the plaintiff's cars for delivery to consignees of said freight. The defendant refuses to recognize the plaintiff as a common carrier entitled to connection with its road, and this the defendant does and persists in doing capriciously and arbitrarily and when it well knows that if the defendant would recognize the physical connection and relation of the plaintiff's road with the defendant's road, and upon reasonable and fair terms agree to an interchange of traffic with the plaintiff's road as above explained, no detriment or loss would come to it, but great advantages come to the public and freight would be transported with less delay, at less cost and far more conveniently.

Plaintiff further states that the defendant refuses to permit its cars to be used upon plaintiff's road in the city of Georgetown, for the convenience of shipment of the product of manufacturing establishments located on plaintiff's road within said city. The defendant refuses to deliver to the plaintiff its empty cars to be carried by the plaintiff to said factories and these loaded and returned by the plaintiff for shipment over defendant's road, but insists that the freight from such sources be either delivered at defendant's station by wagon, or in plaintiff's cars and transferred, by unloading or breaking bulk in defendant's cars, and this the defendant capriciously and arbitrarily does when it knows such a policy is in no way to its advantage, and involves great expense, unnecessary delay and inconvenience to the shippers of such freight.

With the view of securing the advantageous results herein set forth to those persons living along its road, particularly near to and within the city of Georgetown, the plaintiff requested in due and proper terms, the defendant to enter into a traffic arrangement with it upon terms fair, reasonable and just. The plaintiff files herewith and makes a part hereof, a copy in blank of the draft of an agreement tendered by the plaintiff to the defendant and requested the defend-

ant's consent to the arrangement therein presented and to sign the same. With the original draft of said agreement furnished the defendant, was a blue print of diagram, showing the physical connection or relation of the plaintiff's road to the road of the defendant, which blue print or diagram was made a part of said contract. The requests and overtures of the plaintiff as set forth in said paper the defendant arbitrarily and wrongfully refused and rejected, and the plaintiff has been advised by the defendant that the defendant would not make or enter into any traffic arrangement whatsoever with the plaintiff involving the transfer or switching of its cars loaded or unloaded on to plaintiff's road, for any purpose whatsoever.

Plaintiff now comes and makes this complaint and prays the Railroad Commission of Kentucky to require the defendant to recognize the physical connection of plaintiff's road with defendant's road, at or near its station in Georgetown, Ky; require the said defendant to interchange freight in carload lots with the plaintiff; require the defendant to deliver cars loaded with freight consigned to persons residing along its line of road near to and within the city of Georgetown, to the plaintiff for delivery to such consignors; require the defendant to switch cars loaded with freight for persons living within the city of Georgetown operating factories to the plaintiff on plaintiff's road for delivery by the plaintiff to such persons; require the defendant upon proper demand of consignors of freight to be shipped on defendant's road, when residing on plaintiff's line of road, within the city of Georgetown or near thereto to deliver to the plaintiff cars for the purpose of being loaded with such freight at the place of business of said consignors to be thereafter delivered to the defendant by the plaintiff at defendant's station in the city of Georgetown; and require the defendant in this proceeding to file the draft of the agreement delivered to it by the plaintiff as aforesaid, including the blue print or diagram aforesaid.

Plaintiff prays the Railroad Commission to adjust between the plaintiff and the defendant the matters herein complained of, and that the defendant be required to make the concessions and do the things herein asked, upon terms fair and just as between the plaintiff and

the defendant, and the plaintiff asks for all proper relief in the light of the complaints herein stated, to which plaintiff under the law is entitled in respect to the matter herein mentioned and recited.

(Signed)

BLUE GRASS TRACTION COMPANY,

By J. R. MORTON,

MORTON, WEBB AND WILSON,

*Attorneys for Complainant.*

### THE ANSWER.

The Cincinnati, New Orleans & Texas Pacific Railway Company, not intending hereby to enter its appearance hereto, and not waiving its demurrer to the jurisdiction of this Commission to hear and determine the matters complained of and set out in plaintiff's complaint herein, but still insisting thereon, and that this Commission has no jurisdiction to hear said complaint, or to make an order herein, or concerning the matters set out in said complaint, nevertheless for answer to complainant's said complaint says:

That it denies that the complainant, The Blue Grass Traction Company, is authorized to operate an electric railroad as a common carrier of passengers and freight, and denies that its railroad with its electric equipment, or at all, is capable of supporting and transporting large freight cars of the character ordinarily used on steam lines, and employed in freight traffic on defendant's road.

Defendant denies that the said plaintiff hauls any freight of any kind to or from the defendant's station, and denies that it has any cars for the purpose of hauling freight of any kind to or from points in Georgetown, or otherwise.

Defendant denies that plaintiff's road has any franchise from the City of Georgetown for the carrying of freight, or that it has any such charter for a branch of its road, and denies that such branch of plaintiff's road, or any part of plaintiff's road, has a physical connection with defendant's road at or near the defendant's station at Georgetown, or at all.

Defendant denies that plaintiff's road is so constructed, or related physically, or otherwise, to the defendant's road, or electrically equipped, that it can deliver freight received from the defendant, at defendant's station, to persons who are residing along plaintiff's road, at less cost, or expense or delay than is involved in hauling said freight

in wagons to said station, and denies that said plaintiff can handle such freight at much, or any, less cost, delay or expense to such persons, and defendant says that there is no reason in law, justice or common sense why it should permit its cars to be delivered to the plaintiff for delivery along the line of its road, or why it should furnish cars to the plaintiff for consignors along plaintiff's road, to be loaded at farm or factory, and says that the said plaintiff has no cars or equipment that it could in any manner, shape or form interchange with this defendant.

Defendant denies that greater dispatch or convenience of business could be obtained, or that the cost or expense of handling freight reduced in the transportation thereof if the defendant gave to the plaintiff its cars for the purpose of enabling the plaintiff to do a freight business which it is not prepared to do by reason of having no equipment of its own. Defendant says that there is no physical connection between its road and the plaintiff's road, and that it has not declined to interchange business with the plaintiff because it is not possible to interchange business with the plaintiff, for the reason that the plaintiff has no equipment that could be handled or used upon or over the defendant's road and line, and defendant says that plaintiff is not seeking an interchange between itself and the defendant, but is seeking to have this Commission require the defendant to send its cars off of its own lines over and on the lines of the plaintiff without any possible interchange and without proper compensation first being had therefor.

Defendant says that it is true that it refused to recognize the plaintiff as a common carrier entitled to connection with its road, but it denies that it does this capriciously or arbitrarily, or with a knowledge that it would be to the mutual advantage of both plaintiff and defendant so to do, and denies that no detriment or loss would come from so doing, but says that it would be a great detriment and serious loss and inconvenience to this defendant to be required to recognize the plaintiff as a railroad company entitled to interchange.

Defendant says that it is true that it refuses to permit its cars to be taken off of its own lines and over the lines of plaintiff's road, in the city of Georgetown, or otherwise, and says that the taking of its cars in this way would be a taking of its property without due process of law contrary to the provisions of the Constitution of the Commonwealth of Kentucky and the Constitution of the United States, and that the same is equally true with reference to the attempt

on the part of the plaintiff to require this defendant to furnish empty cars to be taken by the plaintiff to factories for the purpose of having same loaded, but defendant denies that it capriciously or arbitrarily refuses to adopt such a policy with knowledge that such a policy would be to its advantage.

This defendant further says that it is a corporation organized, existing and carrying on business under and by virtue of the laws of the State of Ohio, and that it is a resident and citizen of the State of Ohio, and that it operates a railroad from the city of Cincinnati, in the State of Ohio, into and through a number of counties in the State of Kentucky, and into the State of Tennessee, to the city of Chattanooga in said State; that most of its business is interstate business; that at least 85 per cent of all the business which it handles is interstate business, and that not more than 15 per cent is intrastate business, and that the effort of plaintiff herein to have this Commission make such order, affects the interstate commerce of this carrier, as well as the small amount of intrastate commerce, and that Commission has no right to make such order, and has no control over such interstate commerce.

Defendant further answering says that this is an attempt upon the part of the plaintiff to require this defendant to deliver and turn over to the plaintiff cars and rolling stock which belong to and are the property of this defendant without any contract or agreement upon the part of the defendant with the said plaintiff, and that this Commission has no right to require this defendant to turn over its cars to the plaintiff without a contract therefor, and has no right or authority to compel or require this defendant to make a contract with the said plaintiff for the use of its said cars and rolling stock.

Further answering this defendant says that it needs and requires all of the rolling stock which it now has or possesses, for its own business, and that it has no surplus rolling stock for the purpose of turning the same over to the plaintiff for the use of the said plaintiff, and further defendant says that the said plaintiff is not a railroad or common carrier in the sense that the defendant and other steam railroads engaged in general railroad business are, and that it is not within the range of practical business, or practical railroad-ing for the plaintiff and the defendant to interchange freight, even if the plaintiff had rolling stock, but that as a matter of fact, the

said plaintiff has no rolling stock of any kind for freight purposes.

Defendant says that all of its rolling stock is reasonably engaged in interstate commerce; that is to say, in carrying freight from one State to another State, or in carrying in all cars, even though they be destined from a point within the State of Kentucky to another point within the State of Kentucky, loaded in part at least with interstate commerce, and that by reason thereof, and as a matter of fact, all of the cars of this defendant are equipped with all the safety appliances required by the acts of Congress of the United States concerning the appliances to be used upon cars engaged in handling interstate commerce, and that this defendant could not handle any equipment that would come from an electric railroad, because the same would not be provided with the appliances for safety required by the acts of Congress in such cases made and provided.

This defendant further says that it is not possible for the plaintiff to have a physical connection with defendant's tracks without entering upon the tracks of the defendant, and building thereon and thereover electric poles, wires and other appliances, and carrying thereto and thereover an electric current of a high and dangerous degree of voltage, and that same would very greatly increase the hazards of the employes of the defendant upon its tracks and railroad; and that the same could not be constructed without entering upon this defendant's right of way and taking the same; and that said plaintiff has never purchased or acquired by agreement, condemnation, or otherwise, any right to take or enter upon the private right of way, or private property of this defendant.

Defendant further says that the plaintiff is seeking by this proceeding to get for itself and for one or two private corporations in the city of Georgetown, facilities of transportation and advantage not enjoyed by other persons in the city of Georgetown. That the chief purpose of its application as stated by the plaintiff before the Commission, is to haul cars loaded with coal from this defendant's tracks to the ice plant and the water plant situated in the city of Georgetown; and to require this defendant to furnish empty cars to be taken by said plaintiff to the ice plant in the city of Georgetown, there to be loaded with ice and brought back to the tracks of the defendant for shipment, or possibly to be taken over the tracks of the plaintiff to Lexington, or other places for shipment; and that this plaintiff has no right to prosecute such an action on behalf of the

said ice company and water company; and that this Commission cannot grant any relief thereto.

Defendant further says that said plaintiff has no freight depot or depot grounds along its line at any point for the purpose of receiving or delivering freight, and that it is impracticable and impossible for it to handle freight from or to this defendant or any other railroad without having such depots and depot grounds, and that to attempt to do so would result in great injury and loss to the shippers and to this and other carriers.

Wherefore this defendant prays that this proceeding may be dismissed and that plaintiff be required to pay the costs hereof before this Honorable Commission.

(signed)

GALVIN & GALVIN,  
M. R. HUBBARD,  
*Attys. for Defendant.*

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### THE OPINION AND ORDER.

#### OPINION BY COMMISSIONER TARLTON.

"This complaint was filed by the Blue Grass Traction Company vs. Cincinnati, New Orleans and Texas Pacific Railway Company, August 5, 1908. Subsequently thereto the defendant filed a demurrer to the complaint, which was argued by the defendant's counsel and by counsel for complainant, and was afterwards considered by the Commission and overruled, and thereupon the defendant filed its answer on September 2, 1908. Proof was taken on the issues joined by the pleadings, and the case has been submitted to the Commission for a final decision."

"This complaint grows out of the fact that the Georgetown Light Company and the Georgetown Ice Company each own industries in the city of Georgetown, about one mile distant from the railroad station and siding of the defendant. The proof shows that these two industries each use several carloads of coal each month, and that the Georgetown Ice Company ships away from its factory great quantities of ice in carload lots. Under the present arrangement it is necessary for these industries to get their coal from the station of the Cincinnati, New Orleans and Texas Pacific Railway Company by either hauling it in wagons to their plants or by unloading it out of



the railroad car into one of the cars of the complainant for the purpose of hauling it by rail to the said industries, thus, as claimed, causing great inconvenience and the use of much unnecessary labor and expense to the Georgetown Light Company, the Georgetown Ice Company and other industries on complainant's line of railroad."

The facts show that the Blue Grass Traction Company is a standard-gauge road operated by electricity; that it is more than ten miles in length, running from Lexington to Georgetown and through the city of Georgetown and connecting with defendant's road at its station in Georgetown. The physical connection between the two roads exists at present and was used by complainant until something more than two years ago, when this use was obstructed and stopped by the defendant.

#### WOULD SAVE LABOR AND EXPENSE.

It is also clearly shown that a great saving of time, expense and labor in handling traffic will result from the union, as requested, of the tracks of this complainant and defendant, so that cars loaded and to be loaded shall be received, transferred, switched and delivered each by and to the other railroad. By thus furnishing the accommodation facilities and service due to the public engaged in traffic over these two railroads a greater dispatch and convenience will be obtained in that traffic.

The defendant refused to recognize the complainant as a common carrier entitled to such connection with its road. We can really see no good grounds for this refusal to complainant on part of the defendant, because the complainant is a standard gauge road; its locomotives are equipped with automatic airbrakes and automatic couplers, and are in every way adapted for the purpose of hauling freight cars, such as are used upon defendant's railroad line, and upon the lines of other steam railways operating throughout the United States.

Complainant is empowered by its several articles of incorporation, and by its franchise to transport over its line of railroad passengers freight, express and United States mail; and, in our judgment, it possesses the qualities that make it a "railroad" under the laws of Kentucky.

Section 842a of Kentucky Statutes provides as follows:

"All interurban electric railroad companies authorized to construct

a railroad ten miles or more in length, heretofore or hereafter incorporated under the general railroad laws of this Commonwealth, shall be under the same duties and responsibilities, so far as practicable, and shall have the same rights, powers and privileges as is now granted to or conferred upon railroad corporations existing, operated or incorporated under existing laws of this Commonwealth, or under laws that may hereafter be enacted."

### EQUAL LEGAL STANDING.

This statute upon the facts shown in this case gives the Blue Grass Traction Company an equal legal standing with the Cincinnati, New Orleans and Texas Pacific Railway Company, with the same rights, powers and privileges. Each is a railroad over which, under section 821 Kentucky Statutes, it is the duty of this Commission "to exercise a general supervision" and to see that the laws relating to all railroads "are faithfully executed." Clearly sections 213, 216 and 217 of our State Constitution are most important laws relating to railroads, which, when complaint is filed, we are charged to see "are faithfully executed." Section 216 provides:

"All railway transfer, belt lines and railway bridge companies shall allow the tracks of each other to unite, intersect and cross at any point where such union, intersection and crossing is reasonable or feasible."

While it is unnecessary to decide whether or not it is reasonable or feasible for these two railroads to unite their tracks at Georgetown, as that union had been made long since, and exists now as when made yet it seems proper to say that such union there is reasonable and feasible and should be arranged, maintained and used so as to furnish the public the best possible facilities for its traffic. By section 213 it is further provided:

"All railroad, transfer, belt lines and railway bridge companies organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars and shall move, transport, receive, load or unload all the freight in carloads or less quantities coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination

as to the charges, preference, draw-back or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said company. But this section shall not be construed as requiring any common carrier to allow the use of its tracks for the trains of another engaged in like business."

### BOUND TO TRANSPORT FREIGHT.

It has been well said that railroad corporations are quasi-public corporations dedicated to the public use. In accepting their charters they necessarily accept them with all the duties and liabilities imposed upon them by law; thus a quasi-public trust is created which clothes the public with an interest in the use of railroads which can be controlled by the public to the extent of the interest conferred therein. As common carriers they are by law bound to receive, transport and deliver freight offered for that purpose, in accordance with the usual course of business.

Here we have a "railroad" more than ten miles in length, running through one of the most prosperous, fertile and thickly settled portions of Kentucky, with its patrons and persons living along its line entirely deprived of and denied the accommodation and facilities which are due them.

In this case persons living and doing business on the line of the Blue Grass Traction Company's railroad desiring in the usual pursuits of their business to ship and receive from points in Kentucky freight in carload lots over the road of that company, request and demand that the Cincinnati, New Orleans and Texas Pacific Railway Company shall unite its track with the track of the Blue Grass Traction Company in Georgetown, to be so arranged, maintained and used that cars loaded and to be loaded with freight destined from and to points in Kentucky on either road shall be received, transferred, switched and delivered, each by and to the other, at the point of connection, as provided by Section 213, in the way and upon the terms which obtain between railroads under like conditions.

In our judgment this is a reasonable and just demand, with which the Cincinnati, New Orleans and Texas Pacific Railway Com-

pany should comply, not only because, as we think, it will be beneficial to its interests, but also because under the sections of the Constitution hereinbefore quoted it is legally obligated to do so, for in accepting its charter it agreed and obligated itself to comply with the provisions of that Constitution.

### THE ORDER.

Therefore, in view of the foregoing facts and the law applicable thereto, the Commission is of the opinion and so decides that the complainant, the Blue Grass Traction Company, has the same rights, powers and privileges that are granted to all other railroad corporations in the State of Kentucky; that it is the duty of the Cincinnati, New Orleans and Texas Pacific Railway Company in dealing therewith to comply with sections 213 and 216 of the Kentucky Constitution the same as is required with any and all other railroad companies in Kentucky; that said Cincinnati, New Orleans and Texas Pacific Railway Company should in no way construct or prevent said complainant from making, and maintaining when made, the physical connection shown herein between the track of complainant and the track of said Cincinnati, New Orleans and Texas Pacific Railway Company, but permit the physical connections between said tracks to be so arranged, maintained and used as to allow the receipt, transfer, switching and delivery by the Cincinnati, New Orleans and Texas Pacific Railway Company of all cars that originated and started from points in Kentucky loaded with material or goods or freight of any character destined to points on the line of the Blue Grass Traction Company to the said Blue Grass Traction Company for delivery; that it is the duty of the said complainant to receive and deliver at the said point of union to the Cincinnati, New Orleans and Texas Pacific Railway Company all cars loaded with material, goods or freight of any character from points on the line of the Blue Grass Traction Company and destined to points on the line of the Cincinnati, New Orleans and Texas Pacific Railway Company's railroad in Kentucky; that to render the public its due accommodation, facilities and service, it is the duty of the Blue Grass Traction Company and Cincinnati, New Orleans and Texas Pacific Railway Company to so arrange, manage and use the united track that cars loaded and to be loaded with freight destined from and to points in Kentucky on either of

said roads shall, as required by section 213, be received, transferred, switched and delivered each to and from the other at such point of connection for delivery to destination, in the manner and upon the terms which have been established and obtained between railroads under like conditions.

It is also the opinion of the Commission that a refusal to comply with the demands set out in this decision will be a violation of Sections 213 and 216 of the Constitution of Kentucky and render the persons offending liable to the penalties prescribed in Section 217 of that Constitution, of which violation upon duly made complaint we conceive it to be the duty of this Commission charged "to see the laws relating to all railroads faithfully executed" to notify the Attorney General so that he shall proceed "to enforce the provisions of the aforesaid sections" as is in Section 217 of the said Constitution provided.

Dated this fifth day of February, 1909.

(Signed)

A. T. SILER, *Chairman.*

L. P. TARLTON,

McD. FERGUSON,

*Commissioners.*

MRS. JAMES CALLAHAN ----- *Complainant,*

*vs.*

LOUISVILLE & INTERURBAN RAILWAY Co. ----- *Defendant.*

ABANDONMENT OF ROCK HILL STATION, LOCATED  
ON LINE OF DEFENDANT COMPANY, IN  
JEFFERSON COUNTY, KENTUCKY.

CHATTERSON & BLITZ,  
*Attorneys for Complainant.*

CLARENCE R. DALLAM,  
*Attorney for Defendant.*

Case submitted to the Railroad Commission by agreement of parties. Commission after going upon the ground, held—

1. That a station after being used for a period of twenty-five years, as in above case, people having built up homes near same, should not be abandoned.

2. The station at Rock Hill, after being established and maintained for a period of more than five years, could not, lawfully be abandoned, without written consent of the Railroad Commission. Station was abandoned without such consent.

3. That the Railroad Commission will not give consent to abandon station at Rock Hill.

BRIEF FOR COMPLAINANT.

*May it please your Honors:*

This case is laid before your Honors because of section 772 Kentucky Statutes, by which it is provided:

“That any Company that has established and maintained throughout the year, for five consecutive years, a passenger station at a point on its road, shall not abandon such station without the written consent of the Railroad Commission.”

At the hearing of the evidence in this case, it was admitted that this station was the first one established upon this railroad, over thirty years before its abandonment; that it was a railroad station; that the owner of this property, James Callahan, had given the right of way through this property, and was the first President of the road.

It is further admitted that it was used as such stopping place and station by the various companies who have owned this railroad, continuously down to September, 1904, at which time the present owners of the road, the Louisville & Interurban Railway Company, refused longer to stop its train at said place, so as to let off and take on passengers. That negotiations were thereupon entered into, and have been continued down to the present time. That another station was established at the intersection of the county road, some 350 or 400 feet west of the aforesaid Rock Hill station, and that there is no other stopping place or station now between said station at said county road and Gilmours, a distance of 1600 feet. That there are several other stopping places on said road as close together as from 450 to 600 feet. That said station is about three quarters of a mile or a mile beyond the city limits, and that the defendant, Louisville & Interurban Railway Company, refuse to stop at said Rock Hill.

None of the foregoing propositions were disputed.

For the defendant, however, it was contended that when the new station or stopping place was established at the county road, the railway company insisted that it was agreed that the old station should be abandoned, but this agreement was not established. It was also asserted upon the part of the defendant that they could not run their trains on schedule time if required to stop at stations as close as every 450 feet. Since the erection of the new station or stopping place at the county road, a number of people have built residences on said county road, and could not reach the old Rock Hill Station without considerable inconvenience, the same being upon private property and across a creek, the bridge over which is frequently overflowed in high water, and the railway company refusing to make the two stops.

The defendant also contended that this was not an abandonment of a station, simply a removal from one point to another point on this road.

The foregoing is a complete resume, so far as we recall, of the evidence before the Commission.

For the petitioner we claim that as this station and stopping place upon the line of railroad had been established and in continual use for more than thirty years, there could be no abandonment of that stopping place at that point, excepting by the method pointed out by the Statute, which it is admitted was not attempted to be complied with. That it was proper to stop at the county road for all those residents upon that road, and that it was absolutely illegal and unlawful to refuse to stop at the old established station, especially all of these being flag stations, at which they stop only in taking on or letting off passengers, this being the case of every stop on the said road.

That the Commission is given broad powers in the over-seeing of the operation of railroad companies in the State, and especially in Section 830 of the Kentucky Statutes, where the Commission is given the express power, after personal examination, to require additions to, improvements or changes in the stations or terminal facilities for the convenience and security of the public, and to require the company to comply with the directions of the Commissioners; and we think it is, in this case, proper to require the railroad company, under that Section, to continue the stop at the county road as well as to require the company to continue its stop at the old established stopping place some 450 feet to the west thereof.

We contend further that the Callahans have acquired an easement in the stopping place or station, which could be enforced in a Court of Equity, and that by reason of the great lapse of time since this station or stopping place has been in use by the different companies owning said road, the law will presume a grant.

It is said in the Am. & Eng. Enc. of Law:

"That the railroad may be bound by the agreement of the 'promoters entered into before its incorporation with regard 'to the location of a station.'"

"And that a contract between a railroad company and an 'individual to maintain a station at a particular place on this 'line for the benefit of such individual, is not illegal as against 'public policy where the company does not bind itself not to 'establish other stations in the same vicinity or elsewhere on 'its line, as the convenience of the public may demand.'"



Now there is no contention here that there was any agreement not to establish other stations, but the length of time which has elapsed since the beginning of the user presumes the contract or grant which we contend for.

We submit that the facts and the law in this case require an order from this Commission to the railway company to re-establish the stop which they have interrupted at the station known as Rock Hill, and that further the order should go under Section 830 requiring them to continue the stop established by it at the county road for the benefit of the public, as being proper and necessary in the operation of said road.

Respectfully submitted,  
(Signed) CHATTERSON & BLITZ,  
*Attorneys for Plaintiff.*

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#### BRIEF FOR LOUISVILLE & INTERURBAN RAILROAD CO.

Mrs. Callahan has made complaint before the Kentucky Railroad Commission, under Section 772 of the Kentucky Statutes to require the cars of the defendant to stop at the station she has designated Rock Hill.

It appears from the evidence that at or about this point the Louisville & Harrod's Creek Railroad Company had maintained a stop for a number of years. Plaintiff's husband was the first President of the road building this line—its name not appearing. The evidence shows that a short time prior to September, 1904, the road was acquired by the Louisville & Interurban Railroad Company, and that at the request of Mr. R. L. Callahan, and with the consent of his family, the said stop was moved west, a distance of 376 feet to the intersection of the railway tracks and Mocking Bird Lane—the latter being a public road connecting the river road with the Brownsboro road and the streets of the city of Louisville in Crescent Hill. It further appears that the property where is located the station known as "Rock Hill" is owned by the family of James Callahan, and that there is no right or easement of ingress or egress from said stop at Rock Hill to any public road; that persons could reach said station only by passing over the property of the Callahan estate, or by proceeding along the right of way of this company.

This company contends that there has been no abandonment of the station, but that with the consent of the owners of the property, and for the convenience of the patrons of the road, and at the request of Mr. R. L. Callahan, this stopping point was removed to a distance of 376 feet west of its former location. The question as to whether or not this constitutes an abandonment, is one to be determined.

Another question is, whether this Commission has any jurisdiction in the matter.

It is admitted by all parties concerned that the stopping point is now in the most convenient place for the general traveling public. Section 772 of the Kentucky Statutes provides:

"Any Company that has established and maintained throughout the year for five consecutive years a passenger station at a point on its road, shall not abandon said station without the written consent of the Railroad Commission."

We contend that the facts in this case do not constitute an abandonment of the stopping point. We also contend that the evidence conclusively shows that this point was a mere flag station, at which trains stopped to take on or let off passengers. No agent was ever placed there, and no tickets were sold at that point. The Louisville & Harrod's Creek Railroad Company, the vendor of this Company, ran its trains at rare intervals, and when this company secured the road, it was converted into an electric line, and cars were run not less than one hour apart, and frequently at intervals of thirty minutes. This Company has never had an agent here, nor has it ever sold tickets to that point.

We think, therefore, that this is not only not an abandonment of a station, but that, under the meaning of the Statutes, no passenger station had ever been established or maintained at that point.

The leading case on this question is that of

*State vs. New Haven & Northampton Co.*, 41 Conn., 134.

In this case—quoting from the syllabus, which fairly expresses the facts and conclusions of the Court, it is held:

"Where the place claimed to be a station was a mere platform at which certain daily trains had stopped to take or leave passengers, but the Railroad Company had never sold tickets to or from the place, and kept no office or agent there, and had

never placed it in their list of stations or on their time tables, it was held not to be a 'station' within the meaning of the statute which forbids a railroad company to abandon a station without the consent of the Railroad Commissioners."

In the hearing of this case this defendant denied the jurisdiction of this Commission to determine the question presented. We are unable to find any authority in the Commission to rule that this point at Rock Hill must be made a stopping point for its cars. Sec. 772 of the Kentucky Statutes certainly does not give this authority. Sec. 830 of the Kentucky Statutes, referred to by the attorneys for Mrs. Callahan, does not confer this authority on this Commission.

We think that if the act of this company has been (which is denied), a violation of Sec. 722, then it has subjected itself to an indictment of the Circuit Court of this county or of the Franklin Circuit Court, for a violation of said section 772, and that there is no other remedy afforded by the act of the General Assembly.

Under sub-division 3 of Art. V. of Chap. 32 of the Kentucky Statutes, giving and defining the power of the Railroad Commission, it would seem by Section 829 that the authority of the Commission to herein determine complaints is limited to Sections 816, 817 and 818 of said Statutes—all of which relate to extortion, discrimination, or forbidden preferences.

We further believe that if the Commission would look into this matter and consider what is the best interest of the traveling community or patrons of the road, it would determine that stopping point at Mocking Bird Lane, a place 376 feet west of the point complained of, is the proper place, and it would also hold that it not only has no power to require the reestablishment of the stopping point in any event, but that it would be unfortunate for those who patronize the road to require stopping points as close together as these are, and it would further hold that the complainant and her family are estopped, by their consent to change this stopping point, to now complain. And it would further determine that the act of this Company complained of is not embraced in, or in violation of, Sec. 772 and that the stopping point, being removed and not abandoned, to a point on a public road where complainant owns property on three out of four corners of the intersection, does not violate any section of the Statutes, and does not present any case for your Commission to adjudicate.

We are aware that the Chairman of your Commission expressed

contrary views to these, and we are not raising these questions in a spirit of controversy, but only because we are convinced that when the Commission thoroughly sifts the evidence, the facts, and the conditions, it will hold that there has been no violation, that the Commission has no jurisdiction, and that it should make no order in reference thereto, but should leave the parties entirely to such remedies as they may have in law.

Respectfully submitted,

(Signed) CLARENCE DALLAM,  
*For the Louisville & Interurban R. R. Co.*

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#### ADDITIONAL BRIEF FOR COMPLAINANT.

We desire to dissent to a few of the propositions offered in the brief for the defendant.

We deny that the evidence before the Commission showed that the consent of his family was obtained by Mr. R. L. Callahan to cease stopping at the old stopping place, and to stop at the public crossing of the Mocking Bird Valley Lane. In fact the evidence in the case was emphatically to the contrary. Mr. R. L. Callahan testified that he had never gotten the consent of his family either to move the stopping-place or to cease stopping at the old stop. In the letter of his father that was introduced, it says emphatically that he did not understand that there was to be but one stop when the new place was established, or that he was to lose his station. It was shown in the evidence that there were at least two other stops on the road under four hundred feet apart.

It is a novel proposition that a railroad company may cease to stop at one place and establish an entirely different stopping point and claim that it is not an abandonment of the old, but simply a removal. If that be true, then there is no stopping-place upon this whole road which could not be changed or removed.

There was no evidence in the case as to whether or not the company ever sold any tickets to any point on the road, other than that the fact was and is, to a certain point on the road, all fares are five cents, and to all points beyond that place, is ten cents; and that all are flag stations. So the authority cited by counsel has no application what-

ever. This being an interurban or county street car, it establishes no ticket offices upon any of its roads, and has no ticket agents at any of its stops.

The contention is now made, that admitting the facts which we claim, there is no remedy. We had supposed that the Railroad Commission was a pretty tolerably powerful organization.

In Section 772, quoted, the Railroad Company is required to comply with the requirements of the notice given them by the Railroad Commission within ninety (90) days after such notice. And by Sub-Section 772a, it is provided:

"Any corporation, association, company or person who shall wilfully violate the provisions of this Act, shall be liable to a forfeiture of the charter of said corporation, company or association, and upon conviction in a court of competent jurisdiction, fined not less than \$300.00 for each offense."

Of course if the railroad company refuses to comply with the notice and orders of the Commission, based upon the letter of the Statute, they are therefore liable to indictment, prosecution, fine and forfeiture of the charter.

And in Section 793, it is provided:

"Any company failing to comply with, or violating or permitting any of its employees or agents to violate any of the provisions of Section 772 and others of this article, shall in addition to subjecting itself to any damages that may be caused by such failure or violation, be guilty of a misdemeanor and be fined for each failure or violation not less than \$100.00 nor more than \$500.00 to be recovered by indictment," &c.

Now if the argument in the brief is a threat that they will not comply with the order of this Commission, but will suffer indictment and trial, this is a good time for the Commission to know what its powers and authorities are.

It seems to us that there is no question but that the defendant and all other railroads are subject to the notice and requirement of this Commission given under the express letter of the Statute, and we have no fear that when this is done by your Honorable body, that the defendant company will obey it.

Respectfully,  
(Signed) CHATTERSON & BLITZ,  
*Attorneys for Mrs. James Callahan.*

## ORDER.

This case was submitted to the Railroad Commission by agreement of the parties, and the Commission went upon the ground where Rock Hill Station is located, and also viewed the premises where the Mocking Bird Lane is located.

These two stations are 376 feet apart. The admitted facts show that Rock Hill station was established more than 25 years ago, and has been used by the Callahans and by other people who live in the community as a passenger station for that many years.

The proof further shows that more than four years ago the Louisville & Interurban Railway Company abandoned the Rock Hill station and established a new stopping place at a point 376 feet west on the Mocking Bird Lane, which last place established as a stopping place on the Mocking Bird Lane serves a great many more people than the Rock Hill station.

It is not a question before this Commission as to whether or not a station shall be established at a point on the Mocking Bird Lane road, because that station was established by the defendant railway company more than four years ago, and many people have built their homes and made improvements in this section of the country with the belief that this was and is a station and would be continued for their benefit as well as for the benefit of the road itself.

As to the Rock Hill station, some evidence is introduced which tends to show that the Callahans gave permission for this station to be abandoned, but in our opinion the evidence is not conclusive on this point. Some of the Callahan family deny that they ever gave such permission, and, if it be true that the defendant procured the permission of one member of the family, and the other members of the family refused to give their permission, then, in that event, the defendant was not warranted in abandoning the station at Rock Hill. The station at Rock Hill was established and maintained throughout the year for more than five consecutive years as a passenger station, and it could not, and cannot be, abandoned without the written consent of the Railroad Commission, except under heavy penalty. Such written consent has never been granted, and this Commission now refuses to grant written consent for the abandonment of the station at Rock Hill. But, even if all the traveling public had consented to the abandonment of the station, it would not amount to a legal aban-

donment of the same, since the statute requires the written consent of the Railroad Commission, which has never been granted and is now refused.

We believe in this case the conditions and circumstances do not justify the abandonment of Rock Hill station. The people who have lived in the community near Rock Hill station for 25 years and have built up their homes along as the railway company has built up this station have a right to expect and demand that the station at Rock Hill shall be maintained and kept for their benefit and for the benefit of the traveling public in general.

It is said in defendant's brief that there is no right of easement or ingress or egress from said station at Rock Hill to any public road. But this is not a defense to complainant's petition, because the statute wisely provides (Section 4288) a remedy for opening a public road to a convenient depot on a railroad.

The premises considered, it is ordered by the Commission that written consent to abandon the station at Rock Hill by this defendant, is refused.

The Secretary of this Commission is hereby directed to furnish Clarence Dallam, attorney for the Louisville & Interurban Railway Company, with a certified copy of this order, and is also directed to send a certified copy of same to Chatterson & Blitz, attorneys for complainant.

This August 4th, 1909.

(Signed)

A. T. SILER, *Chairman.*

L. P. TARLTON,

JOHN P. HASWELL, JR.

HENDERSON ELEVATOR CO., -----Complainant,

*vs.*

LOUISVILLE & NASHVILLE RAILROAD COMPANY, -----Defendant.

C. M. BULLITT,  
*for Complainant.*

WM. G. DEARING,  
*Atty. for Defendant.*

HELD BY COMMISSION.

1. That it was wrong for defendant company to shove in on siding newly loaded cars, pushing old loaded cars back, keeping them back until \$5.00 demurrage accrued.

2. That it is the duty of railroad companies to use all diligence in placing cars conveniently for shippers.

PROCEEDINGS.

Chairman Siler: We will now take up the Henderson Elevator case.

Mr. Bullitt, for complainant: So far as this case is concerned, I am very much ashamed to come before this Commission with such a small complaint. There is nothing in it, except the principle. The evidence shows that we were handling our grain within an hour before the agent of the Railroad Company knew it was there. We would often telephone them to know if it was in, and the next morning we would get notice about the cars. The evidence is that we did make this complaint to the agent and to the switchman.

Mr. Loomis: I want to qualify as to the statement of bunching the cars. When the consignee received cars that he could not take them all on his private siding, then we do not put in all of his cars. When the railroad blocks the cars, then we put them in.

Mr. Cox: Mr. Bullitt, did you personally call up the Agent about these cars complained of?



Mr. Bullitt: No, I did not.

Mr. Cox: Who did that?

Mr. Bullitt: My clerks in the office.

Mr. Cox: Are they either of them here?

Mr. Bullitt: No, I brought the records.

Mr. Cox: Did you keep the records yourself?

Mr. Bullitt: No.

Mr. Cox: The records are kept by some one else?

Mr. Bullitt: Yes. I want to say that while this record is kept by my clerks in the office, when the trouble came up I handled the entire matter. I talked with the Agent and with the Superintendent, Mr. Logsdon, about it and explained it to them. I don't think they deny that we talked about the matter. I think they will merely say that they have no record of it.

Mr. Cox: Mr. Bullitt, what days were cars placed on this track?

Mr. Bullitt: I can answer only from the records.

Mr. Siler: Let him answer from the records.

Mr. Bullitt: There is Mr. Miller's own letter stating the fact.

Mr. Cox: Suppose you take your record and tell us how many cars were paced on that track by the L. & N., and on what day?

Mr. Bullitt: On the 15th day of January there were placed on our track, in the morning, I think, 18 cars.

Mr. Cox: That is on January 15th, is that the day these cars were placed on this track?

Mr. Bullitt: You look at your records and see.

Mr. Cox: That was January 15th?

Mr. Bullitt: Yes, according to my records.

Mr. Cox: How many cars were placed there by the I. C. on the 15th?

Mr. Bullitt: According to my records there were none placed by the I. C.

Mr. Cox: On the 16th how many cars were placed on your track by the L. & N.

Mr. Bullitt: If I have not made a mistake there were eleven. There were 9 cars put in by the I. C. on the 16th.

Mr. Cox: How many cars by the L. & N. on the 16th?

Mr. Bullitt: Two cars.

I would like to make this statement: That this grain part of it came in by rail over the bridge, and part over the river, which was

loaded by wharfboat. That grain was loaded at the wharfboat. For instance, the manager at the Henderson Elevator Company would call the L. & N. Agent and say to him, put in 8, 10 or 12 cars before working time in the morning, and the next morning he would mark them as cars put in yesterday, when, as a matter of fact, the cars might have been put in at 6 o'clock or 12 o'clock.

Mr. Cox: On the 17th, tell us how many cars were put in by the L. & N.?

Mr. Bullitt: There are 21 marked as having been placed by the L. & N. on the 17th. Some of those were actually placed and unloaded on the 17th, and some were placed that evening and unloaded next morning.

Now look on this book (indicating). There are I. C. cars and there are L. & N. cars. They were loaded at the wharfboat on the 15th. Those cars were placed at the elevator on the 15th and unloaded that same morning. Here are the original notes, which read: "Please have the switchman place these in front so they may be unloaded." They spoke to the switchman and asked him to do this, and he did not—they fired him because he did not do so.

Mr. Cox: Were you there when these cars were shoved beyond your shoot?

Mr. Bullitt: I can't say that I was.

Mr. Cox: Which crew did that, if you know?

Mr. Bullitt: My understanding was that the man was named Bullitt.

Mr. Cox: Mr. Balee was in charge when his men shoved the cars?

Mr. Bullitt: Yes. So far as I am concerned I do not care who it was.

Mr. Cox: I am asking you for information. When was it they shoved them back?

Mr. Bullitt: They shoved them back that evening.

Mr. Cox: Evening of the day they were placed there?

Mr. Bullitt: Yes, and they shoved them back the next day. The first thing that was done when our office force came in the next morning was to call the L. & N. office and say to them that their switchman had displaced our cars.

Mr. Cox: Who did they talk to?

Mr. Bullitt: I don't know, they talked to the L. & N. office.

Mr. Cox: Do you know this of your own personal knowledge?

Mr. Bullitt: No, I do not.

Mr. Cox: You say these three cars that you speak of were part of eight cars?

Mr. Bullitt: No, part of 40 or 50.

Mr. Cox: There were eight cars placed at the same time?

Mr. Bullitt: I do not know, 8 or 9.

Mr. Cox: This private track that you speak of, is the private track which you requested the L. & N. to put those cars on?

Mr. Bullitt: Yes.

Mr. Cox: How many cars can you unload at a time?

Mr. Bullitt: Two cars. Of this particular grain we unload one car.

Mr. Cox: Is it true that you have an arrangement by which you move the cars—you apply your own power?

Mr. Bullitt: Yes.

Mr. Cox: You do not depend on the railroad company to move the cars back?

Mr. Bullitt: No, when they place them up there we can get them to our elevator to unload, but if they come and place another car in front we have to take them as they stand on the track. That is the trouble.

Mr. Tarlton: As I understand, there is less room between the track and the front of the elevator than there is back of it.

Mr. Bullitt: Yes, that is the fact. That is the only way the L. & N. could put in a switch.

Mr. Cox: You are familiar with the Car Service rules?

Mr. Bullitt: I am not sure.

Mr. Cox: You have given them a good deal of thought?

Mr. Bullitt: Yes.

Mr. Cox: The rules are, as you understand them?

Mr. Bullitt: The rule in placing cars on a track 1,500 feet long is that they spot the cars. In this place they unspotted them.

Mr. Cox: You say the Railroad Company ought to spot its cars?

Mr. Bullitt: Certainly they ought.

Mr. Cox: Did you ever see any Car Service rules that required the Railroad Company to spot cars?

Mr. Bullitt: I think that the common sense of the word "place"

means to so place the car that it can be handled. I do not think you could make anything else out of the word "place." They might place it anywhere.

Mr. Cox: Tell the Commission just where the cars should be placed on your track.

Mr. Bullitt: They place them here (indicating on blue print).

Mr. Cox: The Railroad Company would place cars here to your complete satisfaction?

Mr. Bullitt: No. When the limit of the unloading is 13 cars they would place in solid strings of 13, and we could pull them down together.

Mr. Cox: You want the Railroad Company to place its cars in such a position that you can pull them down to the elevator?

Mr. Bullitt: Yes.

Mr. Cox: Is it not true that the I. C. shoved these cars away and the L. & N. had nothing to do with it?

Mr. Bullitt: No. In the first place my record shows that the L. & N. switchman did it. My records show that we complained to the L. & N. and requested that the switchman place these cars.

Mr. Cox: The I. C. comes in there and places their cars on their track. You get as much from the I. C. as from the L. & N.?

Mr. Bullitt: No.

Mr. Cox: Do you receive a good many cars from the I. C.?

Mr. Bullitt: Certainly.

Mr. Cox: And frequently the I. C. puts cars in there, it has of necessity to place the L. & N. cars?

Mr. Bullitt: Yes.

Mr. Cox: Now what is your conception of what the obligation of the railroad is for you—that they must place the cars at certain places for you?

Mr. Bullitt: Certainly. I would like to emphasize that. That is not only my conception of it; that is the practice of the Railroad Company to do that.

Mr. Cox: You are talking about the Railroad Company pulling old cars out and putting them back, when you have asked them to shove the old ones on and put the new ones in behind.

Mr. Bullitt: I said it was an open, standing order with the railroad to place any old cars at the head of the track, and put the new cars at the back.

Mr. Cox: Who did you give that order to?

Mr. Bullitt: The L. & N. people. Unless in some particular case there might be one particular car that we wanted to handle and get out first, and we asked them to place the car ahead, or if it was a particular kind of grain. I think you will get all of that information out of your agent.

Mr. Cox: You did not give any written notice to any of the L. & N. officials, did you?

Mr. Bullitt: I can't say that you have had any written notices to that effect. It has been so long the custom with the railroad.

Mr. Cox: Is it your idea that the Railroad Commission has the authority to award damages in this case?

Mr. Bullitt: Yes, I have a very faint idea that I can get that \$5.00 back.

Mr. Cox: Can you refer me to any authority that the Railroad Commission should award you the \$5.00?

Mr. Bullitt: That is what I am going to find out—if I can be assessed \$5.00 and made to pay it, and there is no power in this Commission, or any one else, to aid me in getting my \$5.00 back, the sooner I know it the better.

Mr. Cox: Where you have more demanded of you than you think you owe, you sue for it don't you?

Mr. Bullitt: No.

Mr. Cox: Is there not a suit pending by you against the I. C. and the L. & N?

Mr. Bullitt: Yes, and they have both made the statement that they have made the mistake, and that they want it withdrawn.

Mr. Cox: Does not the Hepburn bill discriminate in favor of somebody in that matter?

Mr. Bullitt: I do not know why he is bringing this up, whether it is a grand-stand play, or not. The Car Service Association, through Mr. Loomis, saw fit for the I. C. and the L. & N. to sue both the Henderson Elevator Company and myself on certain car service bills. So far as I am concerned the bills were never refused, that is so far as the Henderson Elevator Company is concerned. This suit was brought without notice. When the suit was contemplated we received notice. We told the roads that if the suit was brought we would file counter-claim for fifty or a hundred times the damage. The suit was filed over counter suit of ours for \$15,000, and when we filed it the

officers came to me and said "we have made a mistake," that Mr. Loomis got away with us on this matter. "We know we made a mistake, and we would like to settle this." They have made the entire proposition to settle this in order to keep out of court. And I would like to say that that took place in Mr. Cox's office.

Mr. Cox: Who made it?

Mr. Bullitt: Mr. Higgins of the I. C., after coming to see us, two or three times, to see if the case could not be settled.

Mr. Cox: If the gentleman insists on being heard in this case, I would like to have it postponed until I can have the case prepared.

Mr. Siler: Proceed in the case.

Mr. Bullitt: At the special request of the Car Service Association's attorneys the suit is stopped at Henderson with the promise that it will be settled out of court. And I will say that it will be settled by the Car Service Association paying all expenses. We have been requested to hold up the suit, and the attorneys are not pressing the suit, because when it is settled it must be settled so as not to conflict with any requirements of the Interstate Commerce Commission. They are going to settle it, but how, I do not know.

Mr. Cox: In connection with this case my inquiry was, Mr. Bullitt said he had no appeal and no way of saving himself. Mr. Bullitt, I want to ask you to read the rules.

(Rules were not read.)

Mr. Cox: Mr. Loomis, I will ask you to explain to the Commission if you are the joint agent for the various railroads?

Mr. Loomis: Yes, I am.

Mr. Cox: For how long have you been?

Mr. Loomis: 17 years.

Mr. Cox: Explain to the Commission the matter of the car service rules, what do the railroads undertake to do under the car service rules. What constitutes placement, and explain to the Commission.

Mr. Loomis: In placing cars at private sidings where a man has a particular place to unload a car, we put the cars at that place if it is possible for us to do so. In a number of cases we switch the cars on the track if they are in places where they should not be.

Mr. Cox: Is that done as a matter of requirement, or as an accommodation?

Mr. Loomis: Accommodation.

Mr. Cox: Suppose the track had been full of cars that were

loaded, would Mr. Bullitt have had to wait, and then be charged with service on car?

Mr. Loomis: Yes.

Mr. Cox: Under the rules of the Railroad Commission is it not necessary that a car should actually be placed on the track before service can be charged?

Mr. Loomis: If it can be placed.

Mr. Cox: Explain to the Commission the principle of the car service, as to charging for car service?

Mr. Loomis reads Rule 3 (e) of Car Service and Storage Rules, which is as follows:

"On cars arriving to be delivered on standing order to a private siding, said siding being fully occupied, or to recognized or designated delivery tracks containing cars belonging to some consignee, or in any other case where actual delivery of cars cannot be made on account of some act of the consignee, free time shall expire forty-eight (48) hours from seven (7) o'clock a. m., or twelve (12) o'clock noon next following notice of the railroad company's readiness to place said cars, placement being considered as effected when the railroad company would have made delivery had not the act of the consignee prevented."

Mr. Bullitt: Mr. Loomis, from your casual investigation of the papers, do you think that rule applies to the Henderson Elevator case; that these cars were not unloaded by some act of ours?

Mr. Loomis: Yes.

Mr. Bullitt: Will you explain that to the Commission?

Mr. Loomis: That is the way it has been explained to me.

Mr. Bullitt: You do not really know anything about it?

Mr. Loomis: No, nothing, only the correspondence.

Mr. Bullitt: You say that you are the joint agent of these railroads in the State of Kentucky, is not a fact that they are all under an agreement or bond with each other, or either one that they do not themselves take up these cases, and that you settle them instead?

Mr. Loomis: As an individual agent I do.

Mr. Bullitt: They are under no agreement with each other?

Mr. Loomis: No. I am joint agent for all the roads and act individually for each road.

Mr. Bullitt: They are not under agreement?

Mr. Loomis: Nothing only as to the rules

Mr. Bullitt: Is that the only agreement?

Mr. Lomis: No, there is another one.

Mr. Siler: What is your objections, in a short and concise way, of remitting this \$5.00 back to these people?

Mr. Loomis: From the investigation, it was not from any act of the L. & N. people that those cars were put out of place. They had placed those cars just as they had wished them, and they left them at that point. They had ordered cars from some other road, and the other road has pushed these cars out of place, and they were never requested to replace these cars, and in as much as the other road pushed the cars out of place the L. & N. did not think it their place to put them back into place.

A. J. MILLER.

Mr. Cox: Mr. Miller, were you car service clerk at Henderson, Kentucky, when this matter came up?

Mr. Miller: Yes, sir.

Mr. Cox: I will ask you when these three cars in question L. & N., Nos. 13498, 14164 and 17792 were placed?

Mr. Miller: I just want to say one thing here, my records covering these cars, agree with the Henderson Elevator Company's record, in so far as these cars were concerned (as to the day—they were put in behind them and the other cars shoved back).

Mr. Cox: Tell the Commission when these cars were placed on the Henderson Elevator Company's track No. 3?

Mr. Miller: At 5:45 p. m., on the afternoon of the 16th.

Mr. Cox: And not on the 15th?

Mr. Miller: No, they were not in there on the 15th

Mr. Cox: How many cars were placed there at that time by the L. & N?

Mr. Miller: Eight.

Mr. Cox: One of the cars placed out at the sheller for unloading?

Mr. Miller: Yes.

Mr. Tarlton: Did you place those cars there yourself?

Mr. Miller: No, I take it from sight.

Mr. Bullitt: Tell the Commission where these cars were?

Mr. Miller: These cars were placed in there by the L. & N.'s



switch engine. The I. C. had some loads in there and they put these cars in behind the I. C. cars. When they desired to unload them they could put them down with a cable. If there had been 13 cars, the 13 cars would have been in front of the I. C. cars.

Mr. Bullitt: The L. & N. pushing out the I. C. cars that had been put there previous to these cars?

Mr. Miller: Yes.

Mr. Tarlton: Was that the custom followed there by the railroad?

Mr. Miller: Whether it is the custom, or not, they do it. I have been there personally on the ground and have heard the conversation between the yardmaster and Mr. Higgins, and I have heard the yardmaster ask if they should be pulled out, and he said no, do not interrupt any of them.

Mr. Tarlton: How many cars will the connection with the Elevator Company accommodate?

Mr. Miller: I have 11 cars on my book empty on No. 3. I think the track holds fully 13 cars down to here.

Mr. Cox: When these cars were placed in by the L. & N. they unspotted the I. C. old cars and placed them next to the sheller and the L. & N. cars in behind?

Mr. Miller: Yes.

Mr. Cox: Is not that what they wanted done? Does that comply with their requirement?

Mr. Miller: Yes.

Mr. Cox: When those cars were shoved out of the way then where were the next cars put?

Mr. Miller: These cars were placed at 5:45 p. m., on the 17th at the Elevator. Placed 9 loads in ahead of these cars at 8:40 a. m., on morning of the 17th.

Mr. Tarlton: Where did these I. C. cars come from, off of the I. C. or the L. & N. road?

Mr. Miller: Off of the I. C. road.

Mr. Cox: The L. & N. did not have anything to do in having those cars shoved away?

No, they did not.

Mr. Bullitt: You say you had that list of cars at 5:45 p. m., or did you get them the next morning?

Mr. Miller: I was there at 5:45 on the 16th. I checked your

track about 3:30 p. m. on the 16th. On the morning of the 17th at 7 o'clock, I checked that yard and found these cars there, and I asked the yardmaster and he said he put them there at 5:45.

Mr. Bullitt: Your understanding is that the I. C. shoved these cars out of the way. I am going to assume for a moment that that is correct. Will you tell the Commission when the L. & N. placed any cars there, both in the morning and in the afternoon of the 17th?

Mr. Miller: On the 17th at 5:15 p. m., the L. & N. placed 9 cars in.

Mr. Bullitt: Does your records show that those cars were placed in ahead, and those cars were shoved in at the back?

Mr. Miller: Yes.

Mr. Tarlton: What days?

Mr. Miller: The \$2.00 car service bill on both cars show that the notice was sent out at 6 p. m., on the 15th. The car service record shows it was ordered in the next day, and the record shows that they were placed on the 16th, and that they were not released until 6 p. m., on the 20th.

Mr. Cox: When the cars were shoved in there on the afternoon of the 17th, had the L. & N. left them in the order that the I. C. put them when it pushed them in there?

Mr. Miller: When the L. & N. shoved these cars in there on the 17th they left these cars in the same shape that the I. C. left them.

Mr. Cox: They did not rearrange the cars?

Mr. Miller: No.

Mr. Tarlton: How many I. C. cars were there?

Mr. Miller: Nine.

Mr. Cox: Mr. Miller, have you occasionally had a conversation with Bullitt & Company relative to this matter?

Mr. Bullitt: I don't know, I have had them call my attention and say, "they are pushing these cars back, and if there is any car service on them we are not going to pay it."

Mr. Cox: They did not make any complaint to you?

Mr. Miller: No.

Mr. Bullitt: Is it not a fact that you come on the tracks there at times and do not see any one about the elevator, and is it not a fact that some one called your attention to this matter?

Mr. Miller: Sometimes when I went through there I hardly

seen any one, but coming through there three times a day I usually see some one during the time.

Mr. Bullitt: You do not wish the Commission to understand that if they did not make the statement to you, that, therefore, they did not make the statement, or did not request the L. & N. to take the matter up?

Mr. Miller: No, I do not mean that at all.

Mr. Cox: You are car service clerk, now who does the Henderson people usually take up car service complaints with?

Mr. Miller: They usually take the question up with Mr. Powell.

Mr. Cox: No complaint was made to you personally about the matter?

Mr. Miller: No.

Mr. Cox: Did I understand you to say awhile ago that Mr. Higgins, the foreman, would frequently say to the yardmaster that he did not want the cars placed so as to put the older cars out?

Mr. Miller: Yes:

R. W. POWELL.

Mr. Cox: Do you remember the matter about this controversy with the Henderson Elevator Company, when it came up?

Mr. Powell: Yes, after it came up.

Mr. Cox: Was any complaint made to you about any improper placement of these cars while they were standing on the tracks?

Mr. Powell: No complaint was made to me personally.

Mr. Cox: To any one in your office?

Mr. Powell: Not that I know of.

Mr. Bullitt: Is it not the practice and custom in placing cars there, unless especially requested for some reason, that it is spotted or being unloaded, that the last cars in are placed in behind those already in?

Mr. Powell: Yes.

Mr. Bullitt: Is not that the standing order, unless otherwise requested, that you are to place the new cars back of the old ones?

Mr. Powell: I believe the yard foreman could answer that more accurately than I.

Mr. Bullitt: I am asking you as the agent of the L. & N..

Mr. Powell: That is for the yard crew to handle.

Mr. Bullitt: Is it not a fact that a great deal of this switching

is done at night when there is no one at the elevator, and when you put cars in to the elevator you leave the old loads to be handled first, unless otherwise requested?

Mr. Powell: That is my understanding.

Mr. Bullitt: Then when you say you do not know that any request was made at your office, that is, you mean you do not personally remember?

Mr. Powell: Yes.

Mr. Bullitt: And as a matter of fact you are out of the office, as agent, a great deal of the time, and this request might have come in while you were out?

Mr. Powell: Yes.

Mr. Bullitt: Now in the correspondence that was had with you in regard to these bills you do state that it was your custom to place the cars as stated?

Mr. Powell: I want the Commission to notice that on the car service rules that the L. & N. has taken this position simply out of courtesy and grace—that they do not have to do it.

Mr. Cox: You had no standing order from the Henderson Elevator people as to the method of spotting their cars?

Mr. Powell: No.

Mr. Cox: Is it true, Mr. Powell, that the Henderson Elevator people have given different instructions from time to time as to how to place their cars. Have they not instructed your men not to place them in the order that Mr. Bullitt contends they were to be placed in?

Mr. Powell: Yes.

MR. F. H. VICK.

Mr. Cox: Were you yard foreman for the L. & N. at Henderson during January, 1908?

Mr. Vick: Yes.

Mr. Cox: Did you do switching from time to time for the Henderson Elevator Company?

Mr. Vick: Yes.

Mr. Cox: I believe you say you do remember these particular cars?

Mr. Vick: No.

Mr. Cox: Do you know Mr. Higgins?

Mr. Vick: Yes.

Mr. Cox: Is it not true that Mr. Higgins has given you different instructions from time to time as to how to place the cars on the track, sometimes to put the new ones in first, and run the old ones out, and sometimes to put the new ones in behind the old ones?

Mr. Vick: Sometimes he would ask me to put them in behind.

Mr. Bullitt: That is my own statement, and we would say to you that you must leave that car there—a particular car.

Mr. Tarlton: As to these cars you have no recollection as to the orders?

Mr. Vick: I do not remember.

Mr. Bullitt: I want to ask Mr. Powell. Didn't you have working on your switch crew a man by the name of Balee?

Mr. Vick: Yes.

Mr. Bullitt: Is it not a fact that he was with you as engineer foreman?

Mr. Vick: Yes.

Mr. Bullitt: Is it not a fact that you had a great deal of trouble with him as engineer foreman, and that you discharged him because he was incompetent?

Mr. Vick: Yes.

Mr. Cox: Do you know whether he was handling these cars or not?

Mr. Vick: I do not.

Mr. Cox: Did you discharge him with reference to these cars?

Mr. Vick: I think we discharged him on general principles.

Mr. Cox: You do not know whether he handled these cars?

Mr. Vick: I don't think so.

Mr. Cox: Now this is our case, if it may please the Commission. I think we ought to submit a brief. I think it perfectly plain that another railroad comes in here and shoves these cars out of place, and certainly the L. & N. does not feel that it should go and restore these cars to the position they were first in, and put them where Mr. Bullitt wanted them, and then another road comes along and shoves them out of place, and then 12 hours later the L. & N. comes along with nine cars more, and this place would only hold 13, and there is only room for four more and they could not rearrange and pull out the cars put in by the I. C., and they had to place them in, and, of

course, the Commission will not hold that the L. & N., should go in there and put the cars back where they should be.

Mr. Siler: I believe that the Commission would like to have briefs in this case.

Mr. Bullitt: I hope you will excuse me for that, as I am not a lawyer. Now I simply do not want to make a speech—couldn't if I wanted to, but I want to say that they seem to have grabbed at the only straw left—that another railroad did it. In my statement, and the statement of the agent, show that it is the custom to place the new cars in behind the old loads, and that is the fact before you. It is talked that the I. C. came in there and disarranged these cars. I am willing to concede that it is true that the I. C. put in seven or eight loads there, but they concede that it was the instructions that they put the new loads in behind the old loads, and their own statement shows that they came in there, and ignoring the fact that we had requested them to do this, they did it every day, not only on the 17th but on the 18th and 19th they did it. If it is the fact that it was the custom to put in new loads back of the old ones, I will ask why this was done and because the I. C. happened to put in seven or eight loads that released them in the least.

Was there some empties taken out?

Why certainly, the record is before you that the L. & N. was in there and shoved them back three or four times.

Mr. Cox: Were you in Henderson at the time this happened?

Mr. Bullitt: I can't state positively that I was there, but I was there about the time.

Mr. Siler: The case will be submitted to the Commission, and we will look over the record.

Mr. McD. Ferguson: Gentlemen, the Commission is of the opinion that they have no authority under the law to compel the railroad Company to refund this \$5.00, but we believe that it should be done. We do not believe the charge is rightfully made against the Henderson Elevator Company, and that they should not have paid it, but we have no power to make them pay it back, but we do recommend that the \$5.00 be paid back.

Mr. Bullitt: The Commission promulgates a certain car service rule which they have power to enforce.

Mr. Siler: I am not sure that this is covered by any rule.

Mr. Bullitt: This is covered clearly by the car service rules

promulgated by you that the railroad companies are not entitled to collect or compel me to pay car service for something that is not my fault, and if the railroad company is in fault you should not require me to pay car service. This was the fault of the railroad.

Mr. Ferguson: You have already paid in this sum of money. If you had come to us before you paid the \$5.00 we might have given our opinion that you should not pay it, but your having already paid this money in, I know of no rule by which we have the power to compel them to pay it back.

Mr. Bullitt: I will say to you frankly that the shippers of Kentucky have been bamboozled by the Car Service Association. The first thing we have to do when their clerk makes out our bill we have to pay it, and if we say it is not just, they say you pay it and then we will discuss it afterwards. We paid this bill under protest. Now does a complaining shipper have to pay this and then take it to the Commission of Kentucky. Why not let it remain unpaid until it is decided whether it is right it should be paid. The car service people discuss it among themselves and say, we will not pay it back, and then I come to the Commission and you say it is too late. Now what are we to do?

Mr. Tarlton: I think you are mistaken. The Commission does not decide because we have no judicial power to enforce the refund of this \$5.00.

Mr. Bullitt: I understood you gentlemen to say that if I had not paid this bill you would have decided that I was not to pay it.

Mr. Tarlton: We would have.

Mr. Bullitt: That is a very important ruling to the shippers of Kentucky, and I think that ought to be widely published. We are in the position of being held up. They say you pay it and then discuss the matter afterwards.

Mr. Tarlton: I don't think that any one has a right to hold up a man and enforce a claim except through the courts.

Mr. Bullitt: In a case of this kind, as in a family grocery bill. I say to you, if you as a housekeeper had been presented with a bill from your groceryman, and which consisted of two barrels of flour, and you say to him, I want to pay my bill now, but I never got but the one barrel of flour, and he says, oh, well, pay for the two and then we will discuss the matter as to your owing for the two, but you will

not do so, you will only pay for the one. But in this case they say we must pay for it and then discuss it afterwards.

Mr. Cox: We have great confidence in the opinion of the Commission, and was going to take up the matter as the Commission recommended, and we will try to do what is right about the matter, but the question as to placing a car on a certain place or track has never been brought up. And as to the other property, as attorney for the Car Service Association I cancel a great many bills, and a great many are referred to me for collection.

Mr. Tarlton: It seems to me that when a car is once spotted and another railroad comes along and displaces it, it looks like some one is in fault, and that the car service accrues because of that displacement, and not from the fault of the shipper.

Mr. Cox: Another railroad did it, not the L. & N.

Mr. Loomis: There has been a good deal said about the joint agent of the Car Service Association, about his rules and about the manner in which he handles affairs. I took the evidence from the car service clerk, and I consider that they, the Henderson Elevator people, were in fault in not asking some road to place the cars back. I took it for granted that the I. C. had taken them out by request, and that the L. & N. was not to blame, and then here is the question. What shall I do?

At this point the Commission adjourned.

### OPINION AND ORDER.

This complaint was filed by the Henderson Elevator Company, complaining that it had been wrongfully and unlawfully charged \$5.00 demurrage on cars unloaded by it at its business plant in Henderson, Kentucky. The facts show that the track used by the Henderson Elevator Company would hold about thirteen cars; that if the track was filled with cars for a certain day's business, and if the Elevator Company failed to get all of the thirteen cars unloaded during that day, then the next day when the railroad put in more loaded cars to be unloaded, it was the custom to take out the load already in on the track and put the new loaded cars back of it in order that the old cars might be unloaded first, in order that no demurrage might accrue.

In this case the Railroad Company neglected, failed and refused to perform the services in this way, but simply shoved in the new



loads and pushed the old loaded cars back and kept them pushed back in this way until \$5.00 in demurrage had accrued. In the opinion of this Commission this was unjust and not right, and should have been avoided. It could have been avoided by the Railroad Companies who were performing the service.

There is some evidence tending to show that the Illinois Central, instead of this defendant was responsible for these old cars being shoved back to a place where they could not be promptly unloaded, but the evidence is not clear on this point, and the evidence does tend to show that all the railroads running into Henderson, Kentucky, who served the Henderson Elevator Company, were accustomed to operating and placing these cars in the same way; and that Mr. J. C. Loomis, of Louisville, Kentucky, is the agent of each and all of the roads, and is the manager of the Car Service Association and, therefore, has charge of all the car service business. This being true, it will be perfectly proper, in our judgment, for Mr. Loomis to make an adjustment between the railroads, if any is required in this case.

In our opinion the complainant should not be prejudiced in his rights on account of some trouble between the various roads, for which Mr. J. C. Loomis is the joint agent.

It is our judgment that it is the duty of the Railroad Company always to use all diligence in placing cars for shippers conveniently.

The Henderson Elevator Company is a heavy shipper, and during the three days when this demurrage accrued unloaded a great number of cars, and clearly shows that it was trying to do its full duty, not only to itself, but to the Railroad Company.

In view of these facts it is our judgment that the Louisville & Nashville Railroad Company should pay this \$5.00 back to the Henderson Elevator Company. While we cannot give a judgment for the \$5.00, we suggest that the wrong will be entirely corrected when the \$5.00 is paid, and this, in our judgment, is the only way to correct this pending wrong.

Dated February 5, 1909.

(Signed)

A. T. SILER,  
*Chairman.*  
MCD. FERGUSON.  
L. P. TARLTON;  
*Commissioners.*

KENTUCKY WAGON MANUFACTURING CO-----*Complainant,*

*vs.*

C. N. O. & T. P. RY. CO., AND

SOUTHERN RAILWAY CO, IN KENTUCKY-----*Defendants.*

Subject: Rates on logs from points between Danville, Ky., and Silerville, Ky., to Louisville, Ky. Alleging that extortionate, unjust and unreasonable rates are charged.

### OPINION AND ORDER.

This complaint was filed by the Kentucky Wagon Works against these defendants, alleging that the rate charged for transporting logs from points between Danville, Kentucky, and Silerville, Kentucky, to Louisville, Kentucky, over the lines of these defendants was, and is extortionate, unjust and unreasonable.

The facts as they were developed in the trial of this cause showed that the rate on logs from Louisville, Kentucky, over the lines of these defendants to all points between Danville, Kentucky, and Silerville, Kentucky, was and is 8 cents, except the rate to Commercial, Kentucky, which is 6 cents. The rate on logs from all these points into Louisville, as now constructed, is now from 1 to 4 cents higher than the rates on logs from Louisville to the same points and back over the same road.

It is also shown in the proof that the logs at these points on the C. N. O. & T. P. Ry. Co.'s line are manufactured on their own line of road, and thereby employment is given to the people who produce the logs, which is, indeed, a strong feature and a splendid reason why the logs should not be shipped away from these points to Louisville to be manufactured.

The Commission has hesitated to put in a lower rate on the rough product, which will carry away from its native land and concentrate it in great cities for manufacturing purposes, but the rates complained of here are so irregular on their face that the Commission feels bound to make some adjustment.

It is, therefore, ordered that the C. N. O. & T. P. Ry. Co., and Southern Railway Company, in Kentucky shall make their rates on logs from Moreland, and from all points south of Moreland, to Cumberland Falls, over the Q. & C., and Southern Railway into Louisville at 8 cents per hundred pounds, and from all points between Cumberland Falls and Silerville into Louisville, over the same roads, at 8.4 cents per hundred.

It is also ordered that each of said railroad companies shall charge, collect and receive no higher rates where the transportation of the aforesaid commodities, and the rates fixed herein, and all rates in excess thereof are declared to be extortionate, unjust and unreasonable, and all tariffs, classification rules and regulations in conflict herewith are hereby condemned.

The Commission expressly reserves the power to revise, alter or amend the rates herein fixed, or to revoke, modify or extend this order when deemed just and proper.

It is further ordered that this opinion and order shall be entered upon the record books of the Commission at its office in Frankfort, and an attested copy thereof furnished, by registered mail, to an officer, agent or employe of each of the above named railroad companies, and to said complainant, which has been done.

(Signed)

A. T. SILER, *Chairman.*

L. P. TARLTON,

MCD. FERGUSON,

KEYSTONE MINING AND MANUFACTURING COMPANY ----*Complainant*

*vs.*

LOUISVILLE & NASHVILLE RAILROAD COMPANY, -----*Defendant.*

T. L. EDELEN, *Attorney for Complainant.*

WM. G. DEARING AND C. H. MOORMAN, *Attorneys for Defendant.*

HELD.

1. That Louisville & Nashville Railroad Company should place coal cars on complainant's sidings at its mines, to be loaded with coal.

2. That after said cars are so placed and loaded with coal, defendant company should take up and transport same to points of destination at just, reasonable and non-discriminatory freight rates.

THE COMPLAINT.

The Keystone Mining & Manufacturing Company, plaintiff, the complainant in this proceeding, respectfully sets forth as follows, to-wit:—

1. That it is a corporation organized under the laws of the State of Kentucky, articles of incorporation having been filed in the proper office for Henderson County, Kentucky, on June 26th, 1905; that the chief business of said corporation is the mining and shipping of bituminous coal, and its principal office is situate in the city of Henderson, Kentucky.

2. That the defendant, the Louisville & Nashville Railroad Company, is a corporation organized under the laws of the State of Kentucky, and is a common carrier and public highway, and that it owns and controls a line of railroad that extends through the city of Henderson, Kentucky, which said line of railroad connects with the operations of the Keystone Mining & Manufacturing Company, as hereinafter particularly set forth.

3. The Keystone Mining & Manufacturing Company is the owner

of a large tract of bituminous coal adjacent to the city of Henderson, Kentucky, and has thereon constructed a large, commodious and expensive plant for the mining, handling and shipping of its product, and is equipped with all the mining shafts, tipples, chutes, breakers, bins, scales, planes, machinery, engines, boilers, and other appliances necessary for mining coal and delivering the same from its operating shaft into the railroad cars for the purpose of transporting the same to the open market in the city of Henderson and elsewhere in the State of Kentucky, as well as to points outside the State of Kentucky.

4. That by contract made with the defendant, the Louisville & Nashville Railroad Company, the plaintiff, made physical connection with the tracks of the defendant, and through a switching connection connected its operation by a railroad siding with the line of the defendant company, said siding having been constructed according to specifications required by the defendant, and having been accepted by the defendant as satisfactory.

5. That the defendant company has large terminals in the city of Henderson, Kentucky, and the plant, equipment, operation and siding of the plaintiff are within the switching limits of the defendant company, located as aforesaid in the Henderson terminals. The mining plant of the plaintiff is situate about 100 yards distant from the city line of the city of Henderson, and is one of the industrial plants of the said city. There are many other industrial plants in the same city along the line of the Louisville & Nashville Railroad, and connected therewith by sidings and switching connections, in the same manner as the complainant is connected with the said railroad.

6. One of the main purposes for which the operation of the plaintiff was started, was the supplying of bituminous coal to the various industries in the city of Henderson and adjacent thereto. If it were granted the rights and privileges to which it is legally entitled as advised by counsel, the plaintiff could deliver such coal supply with advantage both to the industrial plants of the city of Henderson and to itself, the proximity of plaintiff's plant to the various industrial establishments of Henderson being such as to enable it to furnish its products to said plants regularly and continuously if the aforesaid rights be extended to it.

7. That the defendant company has issued and promulgated tariffs of rates for switching charges in the Henderson, Kentucky terminals, under date of March 20, 1903 and May 4th, 1908, by

which the said defendant established a charge of \$2.00 per car for car rental, and \$2.00 per car switching charges, where it furnished cars and transported the same from one industrial plant to another within the Henderson switching limits. Since said tariffs were published, as well as prior thereto, the said defendant has transported and switched freight in car load lots from one industrial establishment to another within the switching limits herein designated at the charge herein named. That plaintiff cannot give a complete list of the persons and corporations for whom such switching service has been rendered by the defendant, but among others it names the St. Bernard Mining Company, the Henderson Elevator Company, A. Waller & Company, and the City Flour Mills. Plaintiff further avers that the same switching facilities and charges have been given and extended to David Orr at Mt. Vernon, Illinois, said Orr being engaged in the mining, selling and shipping of coal, as is the St. Bernard Mining Company above referred to.

8. Plaintiff avers that it has valuable contracts for the sale of coal, one with the Crescent Coal Company of Henderson, Kentucky; that it also has constant inquiries from consumers of coal who wish to do business with it and purchase its product, and that in order to perform its contracts and extend its business, it is necessary that it should be supplied by the defendant with coal cars in which to transport its product. That a large proportion of the inquiries for its coal come from the owners of industrial plants in Henderson, which plants are also situate within the switching limits of the defendant company in Henderson. That the plaintiff has constantly from time to time since it was ready to ship coal from the siding connecting it with the defendant company's line, called upon the defendant to place coal cars at its plant in Henderson County to be loaded with coal, and thence to be transported by the defendant to industrial plants in Henderson; and has also requested that the cars to be loaded as contemplated by it should be switched by the defendant from plaintiff's operation to the plants desiring to use said coal, at the rates published and promulgated by the defendant as rates governing the switching within the Henderson terminals. The requests made by plaintiff for cars so to be placed and so to be switched, have been both in writing and verbally.

9. Plaintiff further avers that the defendant has refused and still refuses to place empty cars on plaintiff's siding for loading and

for switching to the industrial plants of Henderson as requested by the plaintiff, either at the rate published by it, or at any other rate that is reasonable and just to plaintiff. Plaintiff after the refusal of the defendant to provide it with cars for loading its coal and to switch said cars as requested, asked that the defendant extend to it a just and reasonable freight charge for freight on coal to be transported by the defendant to the industrial plants at Henderson. In response to said request, the defendant fixed a rate of 50 cents per ton for coal to be hauled, being as great a rate as the defendant exacts and demands from shippers of coal located many times the distance from Henderson that the Keystone Mining & Manufacturing Company is located, none of said other miners and shippers of coal being situated within the switching limits of Henderson. Plaintiff avers that the rate so given, to wit, 50 cents per ton, was unjust and unreasonable, and operated as a discrimination against the plaintiff and a preference to other plants located at a greater distance from Henderson, to wit, plants at Basket to Spottsville, Providence, Earlington and other places.

10. Plaintiff further avers that on the 13th day of August, 1908, the defendant above, a common carrier, refused absolutely to furnish cars for plaintiff's coal, either on the basis of a switching charge, or on the basis of a per ton charge for freight, and has persisted in that refusal to the time of the filing of this complaint; although the plaintiff by its authorized officers, servants, agents and employes has from day to day made demand upon the defendant that it place cars upon the siding of the Keystone Mining & Manufacturing Company to be loaded with coal to be transported by the defendant.

11. Plaintiff avers that it has contracts for the sale of a large part of its product, which it cannot fill because of the unjust, unlawful and arbitrary action of the defendant, and that it has been compelled to refuse many other orders because of its inability to ship its coal over the defendant's line to the city of Henderson. That one of its contracts is with Jo. Higdon, trading as the Crescent Coal Company, out of the performance of which contract plaintiff could and would have made at least \$10,000, had it not been for the denial by the defendant of it, the plaintiff's rights; and that other contracts which it could and would have entered into for shipment of coal, would have resulted in a profit to it of at least \$10,000 or more, all of which has been lost to it by reason of defendant's unlawful and arbitrary acts herein narrated.

12. Plaintiff avers that it is now and always has been willing to pay such reasonable charges as the defendant might impose upon it for the switching of its coal to the industrial plants in the city of Henderson, and that it has been willing to pay any just and reasonable charge which the defendant might make for transporting its coal, and that its willingness so to do is a matter of which the defendant has full knowledge, but that in spite of such willingness and readiness of the plaintiff, the defendant has persisted in denying the plaintiff the rights to which it is entitled as a shipper, and which the defendant, according to the advice plaintiff has received from counsel, is bound to extend and grant. The plaintiff, therefore, prays the Honorable, the Kentucky Railroad Commission, to order, direct and decree as follows:

1. That the defendant place coal cars on plaintiff's siding in the Henderson terminals, to be loaded with coal.

2. That the defendant move and transport said cars, when loaded, to the various industrial plants within the Henderson city limits, at the switching and rental charges published and promulgated for the Henderson terminals.

3. That the defendant grant the plaintiff a just, reasonable and non-discriminatory freight rate for its shipments of coal from its plant to industrial establishments in Henderson, based upon the length of the haul.

4. That the defendant grant the plaintiff a just, reasonable and non-discriminatory freight rate for its coal to be shipped to other points than the industrial establishments in the city of Henderson, and within the State of Kentucky.

5. That the defendant pay unto the plaintiff, the damages which it has suffered by reason of defendant's unjust, discriminatory and arbitrary action set forth in the bill of complaint.

6. That the defendant grant plaintiff such other relief as the premises may warrant.

(Signed)

KEYSTONE MINING & MANUFACTURING COMPANY,

by

KREBS & LIVERIGHT, of Counsel.



## ANSWER.

The defendant Louisville & Nashville Railroad Company, for answer to the complaint filed herein, denies having knowledge or information sufficient to form a belief as to whether the Keystone Mining & Manufacturing Company is the owner of a large or any tract of bituminous coal adjacent to the City of Henderson, Kentucky, or has thereon constructed a large or imposing or expensive plant for mining, handling or shipping of this product; and defendant further denies having a knowledge or information sufficient to form a belief as to whether said plant is equipped with all or any mining plant shafts or tipples, chutes, breakers, scales, bins, planes, machinery, engines, boilers or other appliances necessary for the mining of coal or delivering same from its alleged operating shaft into the railroad cars for the purpose of transporting the same to the open market in the City of Henderson or elsewhere, or for the purpose of transporting same to points outside of the State of Kentucky.

The defendant Louisville & Nashville Railroad Company denies having knowledge or information sufficient to form a belief as to whether or not one of the main purposes or any purpose for which the operation of the complainant was started was the supplying of bituminous coal to the various industries in the City of Henderson and adjacent territory; and defendant denies that if the alleged rights and privileges set up in the complaint were or any of them was granted, the complainant would be enabled with advantage to the industrial plants in the City of Henderson or to itself to furnish its products to said industrial plants or any of them more regularly or continuously than it can now furnish its product to said industrial plants.

The defendant denies that it has issued or promulgated tariffs of rates for switching charges in Henderson, Kentucky, terminals, under date of March 20, 1908, or May 4, 1908, or any other date, except as hereinafter set out, and it denies that by said tariff of rates referred to in the complaint it established a charge of \$2.00 per car for car rental and \$2.00 per car for switching charges where it furnished cars and transported the same from one industrial plant to another within the switching limits of Henderson, Kentucky, except upon terms and conditions hereinafter set out as shown by its terminal tariff; it further denies that since the publication of its alleged tariff the defendant has transported or switched freight in carload lots from

one industrial establishment to another within the switching limits referred to in the complaint, or has charged for such service the charges referred to in said complaint except upon the terms and conditions hereinafter referred to and set out; and defendant further denies that it has performed the switching services sought by complainant, and embraced herein, for the St. Bernard Mining Company or for David Orr of Mt. Vernon, Ill.

The defendant denies that the complainant has valuable contracts, or any valuable contract, for the sale of coal, or that has such a contract with the Crescent Coal Company of Henderson, Kentucky, or that it has constant inquiries from consumers of coal who wish to do business with it or purchase its product, or in order to perform its alleged contracts, or any contract, or extend its business, it is necessary that it should be supplied by the defendant with coal cars, or any coal car, in which to transport its product; and defendant denies that a large proportion, or any proportion, of the inquiries for its coal come from the owners of industrial plants, or any plant, in Henderson, Kentucky, situated within the switching limits of the defendant company in Henderson, Kentucky; and defendant further denies that the complainant has constantly or at all requested of the defendant cars, or any car, for the purpose of loading the same to be switched by the defendant from complainant's plant, at the rates published and promulgated by the defendant as rates covering such services; and it denies that the complainant has ever requested such switching service at a rate that was fair and equitable and that should be charged for such service. It denies that any such request for cars has been made by complainant, either in writing or verbally, or that the alleged rate of \$2.00 per car for car rental and \$2.00 per car for switching charges is fair or equitable or a just rate, or has ever been enforced as a rate for the switching of cars of coal from mining plants within the city limits of Henderson to industrial plants within the said city limits.

The defendant denies that the rate fixed by the defendant,—to-wit, 50c per ton for coal to be hauled from complainant's plant to industrial plants in Henderson was or is unjust or unreasonable or operated as a discrimination against the plaintiff or as a preference to other plants, or to any plant or plants at Basket, Spottsville, Providence, Earlington or any other place; and defendant denies knowledge or information sufficient to form a belief as to whether complainant has any contract for the sale of a large part, or any part, of its product,

or whether there is any such contract that cannot be filled because of unjust, unlawful and arbitrary action on the part of the defendant, and it denies that complainant has been compelled to refuse any order because of its inability to ship its coal over defendant's line.

Defendant denies that complainant's alleged contract with Jo. Higdon could or would have made complainant \$10,000, or any other sum, or that the denial by defendant to perform the switching service requested by complainant caused complainant to lose anything on said alleged contract, or on any contract, which it could or would have entered into, or that it caused complainant to lose profits of \$10,000, or any other sum, or that by reason of defendant's denial to perform such switching service the plaintiff has lost anything on any contract, or has been damaged in the sum of \$10,000, or any sum, and it denies that all or any of the actions of defendant in refusing to perform said switching service for complainant was unlawful or arbitrary, or that the defendant has been guilty of any unlawful or arbitrary act as narrated in the statement, or at all.

The defendant denies that the complainant is now or always has been willing to pay such reasonable charges as the defendant might impose upon it for switching complainant's coal to industrial plants in the City of Henderson, Kentucky, or that it has been willing to pay any just or reasonable charge which defendant might make for transporting its coal, or that its willingness so to do is a matter of which the defendant has full or any knowledge or that in spite of said alleged willingness or readiness of the plaintiff the defendant has persisted in denying or has at all denied the complainant the rights or any right to which it is entitled as a shipper, or which the defendant is bound to extend or grant.

The defendant further answering says that it publishes a tariff covering its charges for services in transporting freight from points within the City of Henderson to other points on its line outside of the City of Henderson and covering its charges for switching between switches, tracks and warehouses and industries in the Henderson, Ky., terminals when said service is performed by it, but it says that it is not engaged in the service of switching between industrial plants in the City of Henderson and does not hold itself out as engaging in service of that kind or in performing such services, and that it was not so engaged and did not hold itself out as being so engaged at any time

during the time complained of; that in its terminal tariff referred to it has provided on Note 9, page 130, as follows:

"The L. & N. R. R. does not engage in the business of local switching between switches, tracks, warehouses, or industries in Henderson, Ky., terminals, but where any such service is performed as an accommodation, a charge of \$2.00 per car plus \$2.00 per car for car rental shall be assessed."

Defendant says that this is the only provision in its terminal tariff, or any tariff, which it has promulgated authorizing the fixing of a charge for switching cars between industrial plants within the City of Henderson, and by this provision it expressly notified the complainant and the public that it would not obligate itself to engage in the service of switching cars between industrial plants within the city of Henderson; that the complainant knew that the defendant was not holding itself out as undertaking to engage in said service, and was not engaged in this service, and it says that there was no legal duty, and is now no legal duty, and obligation, upon the defendant to perform such service.

Defendant says that insofar as it has engaged in the service of this kind the service so rendered was performed as an accommodation to the industrial plants of a different character to complainant and consisted chiefly of switching cars from said industrial plants to the incline track on the defendant Louisville & Nashville Railroad, with the view of transporting said cars to points on the line of this defendant outside of the terminal limits of the City of Henderson.

Defendant says that at no time embraced within the period of time complained of has it switched for any coal company, or for any mining company within the limits of Henderson, Kentucky, terminal cars or any car of coal from said mining or coal company to any other industrial plant within the limits of the Henderson terminals except two cars of coal which were switched during the months of March and April, 1908, for use of complainant, one of which was switched to the Henderson Elevator Company and the other to the City Electric Light Plant. It says that the other cars which it has switched during the period complained of contained corn, wheat, hay, oats, grain and similar products, and were switched to its inclined track for the purpose of becoming outbound traffic. It says that it has not switched any cars of coal between industrial plants located in the City of Henderson at any time during the said period except the two cars referred

to; that it has not held itself out as being engaged in switching of that character of freight, and is not engaged in switching said freight; that it says that not being engaged in said service or holding itself out as being so engaged, it is not legally bound to perform such service, and is not a common carrier for said purpose.

Wherefore, having fully answered, defendant prays that the complaint filed herein be dismissed, and for all proper relief.

(Signed)

WM. G. DEARING AND C. H. MOORMAN,  
*Attorneys for Defendant.*

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#### BRIEF FOR COMPLAINANT.

The Keystone Mining & Manufacturing Company owns and operates a coal mine within the yard limits of the city of Henderson, Kentucky. The mine has been connected to the tracks of the Louisville & Nashville Railroad Company, with the latter's consent, and at the expense of the Mining Company. The defendant company owns and operates a belt line within the corporate limits of the city of Henderson. The purpose of this belt line is to enable the defendant by use of engines and cars to deliver freight to and from any point within the city of Henderson upon the line of this belt railroad. Numerous factories are situated upon the line of this belt railway and are connected with it physically by switches running from the railroad. The defendant company refuses very frankly to handle coal of the complainant company from its mines so situated to any point within the city of Henderson, either upon its main line branch, or its belt line. Complainant appeals to the Commission to remedy this wrong.

Now it must be conceded that all traffic within the yard limits of the city of Henderson from one factory to another, is handled not upon the local freight trains of the defendant company, but upon cars furnished by it and hauled from point to point by yard engines. It would be manifestly unjust to the complainant company to surrender at the command of the railroad company, the physical advantage which its location inside the City of Henderson gives it for the sale of its coal to the factories in that city. To require it to pay for delivering the coal in Henderson the same price which is paid by the miners operating forty, fifty and sixty miles distant, is to annihilate the ad-

vantage given it by its position, and is to enable the defendant company to discriminate in favor of mines located at that distance from Henderson. And so the mines located at say, Madisonville or Earlington not only have the market which their proximity to those points gives them, but they are put by the defendant company upon the same footing as to rates with those more favorably located mines. But the other alternative presents itself and that one it seems clear to a demonstration is the one which should be adopted by the Commission. It is, that the railroad company handling coal within the yard limits of the City of Henderson by its yard engines should be required to perform that service for the complainant at the price which it has fixed as a fair compensation for such services; that is, a rental of \$2.00 per car and switching charge of the same amount.

Please reflect for a moment; the defendant company has published as its contribution to the rates which it deems reasonable, the rate which I have named, reserving to itself the absolute discretion to say what favored shippers should have that rate, and to what ones it should be denied. If the railroad company is a common carrier of coal, it does not lie in its mouth to say, "I will handle for the Madisonville company or the Earlington company to Henderson, and will deny to the Henderson company the use of the public service I was incorporated to render." If the railroad company can determine arbitrarily for itself that it will not act as common carrier within the yard limits of the City of Henderson, then it may repudiate its entire common law obligation, because the yard limits are prescribed by the railroad company itself. The Constitution provides substantially that the railroad company shall carry for all customers alike where the physical facts make such a service possible.

Having therefore fixed for itself what is a reasonable charge for handling freight in carload lots within the City of Henderson, I most respectfully submit that no course lies open to this Commission, except to say that that service shall be rendered for the complainant at the same price it is rendered for those customers who are favored by the defendants' traffic manager.

The defendants' traffic manager has, as the writer thinks, very skilfully undertaken to confound in the minds of the Commission the rate for the freight haul with what he is pleased to denominate a switching charge. He has undertaken to say to the Commission that the switching charge is only exacted in connection with a through

haul. In other words, a carload of coal or other commodity is shipped to Henderson from a distant point. Instead of delivering this commodity at the depot, the car by using this belt line is transferred to the place of business of the consignee. Mr. Compton says that no switching charge made by his road when the converse is true, that is, when a carload of freight is taken by his yard engine to the depot and attached to the freight train destined to some other point. So that the statement made by him that no switching charge is made by his company in connection with what is properly a freight haul, leaves the charge upon his tariff to apply exclusively to hauls within the yard limits handled by the yard engines and not by freight trains.

It is a matter of common knowledge more within the knowledge of this Commission than of the outside world, that the rate charged for hauling freight by freight trains is estimated upon the basis of service of that character, and not upon the expense incident to the haul within the yard limits. A fixed price is charged from Baskets to Henderson, because the railroad company upon certain well defined lines estimates the cost of handling a local freight train. So from Madisonville and so for a still longer handling from St. Louis. Upon this basis Mr. Compton was willing to say to the Commission that the Keystone Mining & Manufacturing Company ought not to have a less rate than 50c upon the ton. The statement was based upon the idea that the Commission was ignorant of the original principles underlying the fixing of freight rates. The data from which freight rates are estimated in handling commodities in freight trains, bear no relationship to those fixing the price of handling commodities where that commodity is not handled by the freight trains, but by a yard engine always under steam, a yard crew always in service and at a time not fixed by schedule, but when the commodity can be handled without loss of time by the railroad and without expense, except the wear and tear upon the cars and the necessary fuel used in performing the service. When therefore the railroad company publishes to the world that a rental of \$2.00 a car is reasonable for services performed within the yard limits of the City and a like amount to cover the services of the train crew and yard engine for the time it is necessarily employed, it has fixed as satisfactory a basis for charge as any which the Commission could possibly adopt.

Mr. Compton seems very much shocked at the idea that the company by granting to the Keystone Company a charge measured by

that for switching within the yard limits within the City of Henderson is discriminating against the Madisonville mines or those of Earlington. The discrimination is not a discrimination made by the railroad company, but made by the hand of God when he located the mines inside of the City of Henderson and thereby gave to the Keystone Company a practical monopoly of that market, or at least of such a handicap as the railroad company may not under the Constitution remove. It will not at all do for the company to say, "I have fixed a blanket rate covering the Western Kentucky territory, and therefore you must come within that rate." It might readily be said to the defendant company, "you have created a condition which necessarily results in injustice to those mines located near Henderson as against those at a more distant point, but the natural advantage of location shall not be destroyed and a mine located within the yard limits of Henderson is entitled to have its product handled at a rate which you say is a fair rate, claiming for yourself the right to say what patrons of the road shall enjoy that discrimination."

A further reflection lies in the fact that some consideration is due the consumer at Henderson in this matter. The Constitution provides in unmistakable terms that no discrimination shall be made against localities. In other words, I may say the Constitution provides that no common carrier shall attempt artificially to annul or destroy those natural conditions entering into the competition of market with market and of commodity with commodity. To say to the consumer at Henderson, you will not be permitted to enjoy the advantage of a mine located in the City of Henderson, is to deny him the right which exists independently of such arbitrary action on the part of the carrier. If no railroad existed at all in Western Kentucky a natural advantage possessed by the Keystone Mining & Manufacturing Company for marketing its products in the city of Henderson would practically prohibit competition with other Western Kentucky coal points.

For these reasons we most respectfully submit that the complainant is entitled to an order directing the defendant to furnish such cars as it may need for marketing its products in the city of Henderson at a charge measured by the published tariff as a reasonable charge for that purpose; that is, \$2.00 per car rental and \$2.00 switching charge. If the Commission should be of opinion that is not an adequate compensation to the railroad company, a charge should be fixed,



nevertheless upon the basis of a switching charge even if the rate should exceed \$2.00 per car.

The Commission should further ascertain, we submit, what damage the complainant has suffered upon the refusal of the company to comply with its obligation as a common carrier up to the time of this hearing.

(Signed)

LINDSAY & EDELEN,  
*For Complainant.*

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BRIEF FOR DEFENDANT.

Sections 209 to 218, inclusive, of the present Constitution of Kentucky embrace the constitutional authority for the present Kentucky Railroad Commission.

Section 209 establishes a commission, to be known as "The Railroad Commission," and provides that the powers and duties of the Railroad Commission shall be regulated by law; and until otherwise provided by law, the Commission so created shall have the same powers and jurisdiction, perform the same duties, and be subject to the same regulations as allowed to the then existing Railroad Commissioners.

Section 213 of the Constitution provides as follows:

"All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

It will be noted that this section requires the railroad to receive, transfer, deliver, and switch empty or loaded cars, with equal promptness and dispatch, and without any discrimination. There is no discrimination in the case before the Commission. It is apparent that this section was really meant to require railroads to receive from other roads and other carriers cars, and to transfer, switch, and deliver same, subject to the provision that it should not be construed to allow the use of its tracks for trains of another engaged in like business.

None of the constitutional provisions referred to could be construed as vesting in the Commission, or as vesting in the Legislature authority to give to the Commission, power to require any railroad to engage in switching service or to engage in the service of carrying a particular kind of freight between certain points, where the railroad company does not hold itself out as engaging in that business. The powers of the Commission, conferred by the Legislature, are embraced in Chapter 32 of the Kentucky Statutes.

Section 816 of the Kentucky Statutes is as follows:

"If any railroad corporation shall charge, collect or receive more than a just and reasonable rate of toll or compensation for the transportation of passengers or freight in this State, or for the use of any railroad car upon its track, or upon any track it has control of, or the right to use in this State, it shall be guilty of extortion."

Section 817 is as follows:

"If any corporation engaged in operating a railroad in this State shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered in the transportation of passengers or property than it charges, demands, collects or receives from any other person for doing for him a like and contemporaneous service in the transportation of a like kind of traffic, it shall be deemed guilty of unjust discrimination.

Section 818 is as follows:

"It shall be unlawful for any corporation to make or give any undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic, in any respect whatever, in the transportation of a like kind of traffic; or to subject any particular person, company, firm, cor-

poration or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage. When one or more car loads of freight shall be transported at the same time for different persons, and for each shipper a car load or more, such shipment shall be considered and taken as the same quantity of freight within the meaning of this law; and when less than a car load of freight, and over five thousand pounds, are transported at the same time for different shippers, and for each shipper over five thousand pounds, such shipment shall be considered and taken as the same quantity of freight; and when over five hundred pounds and less than five thousand pounds are transported at the same time for different shippers, and for each shipper said quantity of freight, such shipment shall be considered and taken as the same quantity of freight."

Section 829 provides that the Commission shall hear and determine complaints under Sections 816, 817, and 818; that they shall hear and reduce to writing all the evidence adduced by the parties, and render such award as may be proper; and that if the award is not satisfied within ten days after the same is rendered, the chairman shall file a copy of said award and the evidence heard, in the office of the clerk of the circuit court of the county, which, under the Code of Practice, would have jurisdiction of said controversy, and the clerk shall enter the same on the docket for trial, and shall issue summons, as in other cases; that if the party against whom the award is rendered, fails to appear, judgment shall be rendered by default; that if a trial is demanded, the case shall be tried, in all respects, as other ordinary cases in which the same amount is involved, except that no evidence shall be introduced except that heard by the Commission, unless the court is satisfied, by sworn testimony, that such evidence could not have been produced before the Commission. This is the civil remedy for a violation of sections 816, 817 and 818. The penalty for a violation of those sections is provided for in Section 819, and the tribunal in which the penalty can be exacted is designated by said section. The circuit court of any county into or through which the line of railroad may run, and the Franklin Circuit Court, shall have jurisdiction of the offense, which shall be prosecuted by indictment, or by action in the name of the Commonwealth, upon information filed by the Railroad Commission. Indictments under this section shall be

made only upon the recommendation or request of the Railroad Commission.

Section 820 of the Kentucky Statutes refers to charges for long and short hauls of the same class of freight. Prosecutions for a violation of that provision shall be had only on recommendation of the Commission, and after the Commission has failed to exonerate the railroad. (See *L. & N. R. R. Co. v. Commonwealth*, 24 Ky. Law Rep., 593.)

Section 820a is as follows:

"When complaint shall be made to the Railroad Commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates, over its line or lines or railroad in this Commonwealth, or when said Commission shall receive information, or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said Commission to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employe of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, argument or evidence offered by the parties as the Commission may deem relevant, and should the Commission determine that the company or corporation is, or has been, guilty of extortion, said Commission shall make and fix a just and reasonable rate, toll or compensation, which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the Commission shall be entered and be an order on the record-book of their office and signed by the Commission and a copy thereof mailed to an officer, agent or employe of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad or corporation or any officer, agent, or employe thereof, charge, collect or receive a greater or higher rate, toll or compensation, for like services thereafter rendered than that made and fixed by said Commission, as herein provided, said company or corporation, and said officer, agent or employe shall each be

deemed guilty of extortion, and upon conviction shall be fined for the first offense in any sum not less than five hundred dollars, nor more than one thousand dollars, and upon a second conviction, in any sum not less than one thousand dollars nor more than two thousand dollars, and for a third and succeeding convictions, in any sum not less than two thousand dollars nor more than five thousand dollars.

"The circuit court of any county into or through which the line or lines of road carrying such passengers or freight, owned or operated by said railroad, and the Franklin circuit court shall have jurisdiction of the offense against the railroad company or corporation offending, and the circuit court of the county where such offense may be committed by said officer, agent or employe shall have jurisdiction in all prosecutions against said officer, agent or employe.

"Prosecutions under this act shall be by indictment.

"All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

"In making said investigation, said Commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the Commission, approved by the Governor, the Auditor shall draw his warrant upon the Treasurer for its payment."

Section 826 provides, in substance, that whenever it shall come to the knowledge of the Commission, or they shall have reason to believe, that the laws affecting railroad corporations in their business relations to the public have been violated, they shall prosecute, or cause to be prosecuted, the corporations or persons guilty of such violations.

Section 829, as stated, gives the Commission jurisdiction to hear and determine complaints under Sections 816, 817, and 818, and provides the civil remedy for enforcing the awards of the Commission on complaints filed under the sections referred to.

Section 830 provides as follows:—

"Whenever, in the judgment of the Commission, after a personal examination of the same, it shall appear that repairs are necessary upon any railroad, or when, from complaint made or their own knowledge, they shall have reason to believe that the

tracks, bridges, tunnels, or other structures of any company are in an unsafe or dangerous condition, or unfit for public travel, or that any additions to, improvements, or changes in the stations or terminal facilities are needed for the convenience and security of the public, they shall give notice in writing to the company owning or operating such road of the repairs, improvements or changes they deem proper and necessary, and shall afford such corporation an opportunity to be heard in reference thereto; and if the company shall neglect or refuse to make such repairs, improvements, or changes within a reasonable time after such hearing, if a hearing is requested by the company and the Commission shall believe that such improvements or changes are proper and necessary after a hearing, if one is had, they shall lay the facts before the Attorney General for his action, and shall report the same fully to the next Legislature; no examination, request, advice, or report of the Commission shall, in any way, affect the duties or obligations of any company or relieve it from any liability."

None of these sections authorizes the Commission to hear and determine a complaint such as is now before the Commission, or to grant the relief asked. There is no authority or power vested in the Commission to require the defendant to deliver to plaintiff's siding in the Henderson terminals coal cars to be loaded with coal, and to switch the same to industrial plants within the said terminal limits.

The Commission can exercise only such powers as are expressly conferred upon it by statute. It is a creature of the statute. And any attempt on the part of the Commission to exercise any authority or power not clearly and expressly given it by statute, would be void. The Commission is not authorized to imply any authority that is not clearly expressed in the statute.

In *Chicago, I. & L. R. R. Co. v. Railroad Commission of Indiana*, 38 Ind., 439, the court said:—

"The power possessed by the commission is only such as the statute gives it. The method by which it is to proceed is pointed out. If this method is not pursued, its action is a nullity. The whole proceeding is a special statutory one, and certain steps must be taken before the commission has authority to proceed."

In *State v. Chicago, M. & St. P. Ry. Co.*, 94 N. W., 406,—where the authority of the railroad commission of South Dakota was

under inspection by the Supreme Court of that State,—the court said:—

“The proceedings being purely statutory, the commissioners must bring themselves within its terms, and allege the performance of every material condition precedent (citing *Oswald v. Moran*, 77 N. W., 281, and other cases). The jurisdiction of such commissions is not given by implication. Commissions of that character are mere creatures of the statute, and possess no power except what the statute expressly confers upon them.”

In *Chicago, B. & Q. Co. v. Day*, 38 Feb., 656, Mr. Justice Brewer, then circuit judge, construed the statute of Iowa as granting to the Commission of that State the power to establish certain schedules of rates. The reasoning of that opinion clearly sustains our contention: that, unless the power and jurisdiction are clearly vested in the Commission by statute, the Commission has no authority to act.

In *Board of Railroad Commissioners of Oregon v. Oregon Railway & Navigation Co.*, 19 Pac. Rep., 702,—in which the power and authority of the Railroad Commission of Oregon were under consideration,—it was held that a power conferred by the Legislature upon a Board of Commissioners will not be extended by implication, and that the acts which the board attempts to do under the power will not be upheld unless the authority to do them is affirmatively shown to be included in it. The court said:—

“The first question arising would be, what contentions between the Railroad Commission and such persons, firms, etc., has it jurisdiction of? The answer to that question can not be left to speculation. The jurisdiction of such commissions is not given by implication. Commissions of that character are mere creatures of the statute, and possess no power except what the statute expressly confers upon them.”

And, again:—

“It has for a very long time been considered the safer and better rule, in determining questions of jurisdiction of boards and officers exercising powers delegated to them by the Legislature, to hold that their authority must affirmatively appear from the Commission under which they claim to act.”

In *Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific R. R. Co.*, 167 U. S., 479, it was held that inasmuch as Congress had not conferred upon the Interstate Commerce Com-

mission the legislative power of prescribing rates either maximum or minimum or absolute, an order of the Commission indirectly prescribing such rates was void and ultra vires. This opinion is very instructive. It is said:—

“The question debated is whether it vested in the Commission the power and the duty to fix rates; and the fact that it is a debatable question, and has been most strenuously and earnestly debated, is very persuasive that it did not. The grant of such power is never to be implied. The power itself is so vast and comprehensive, so largely affecting the rights of carrier and shipper, as well as indirectly all commercial transactions, the language by which the power is given had been so often used and was so familiar to the legislative mind and is capable of such definite and exact statement, that no just rule of construction would tolerate a grant of such power by mere implication.”

In *Danciger v. Wells, Fargo & Co.*, 154 Fed. Rep., 379, it was held that a suit to compel an interstate carrier to receive and transport goods tendered to it for shipment which it wholly refused to do, was one to compel the performance of a duty imposed on it by law, and within the jurisdiction of the courts; and that said Commission had no authority or jurisdiction to compel the carrier to accept the shipment.

It has been suggested that Section 821, Kentucky Statutes, and perhaps the latter part of Section 826, confer authority and power on the Commission to require a railroad company to perform the services which the complainant is seeking to require the defendant to perform in this case. The latter part of Section 826 merely provides for prosecutions of corporations that have been guilty of violations of the law. Section 821, while providing that it shall be the duty of the Railroad Commission to see that the laws relating to railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State, confers no express authority or power on the Commission to act in cases of this kind. Under the authorities cited, the Commission can not draw its power to act in a specific case from a statute giving it general supervision over corporations. If it were permitted to do this, it would, in effect, nullify the rule laid down by the courts: that commissions are mere creatures of the statute; that their jurisdiction is not given by implication; and that they can exercise only such powers as the statute expressly confers upon them.



In *Commonwealth v. L. & N. R. R. Co.*, 112 Ky., 75, the court said:—

“Had the Legislature intended that the Railroad Commission should have the authority to inaugurate or not, as it saw fit, prosecutions or the violations under Sections 213, 217, inclusive, it would have in express terms conferred that authority, and not merely have conferred that which exists by virtue of Section 218.”

Construing Section 821, Kentucky Statutes, with the same strictness, it is manifest that the court would hold that there is no authority vested in the Commission, by said section, to require a railroad company to engage in transportation service between industrial plants located within the same switching terminals. While, as we have heretofore suggested, we do not think Section 213 of the Constitution applies to cases of this kind; still, if it does, it would seem, under the decision referred to, that the Railroad Commission has no power to make any order relative to the duties imposed upon the railroad companies by Section 213 of the Constitution.

The Interstate Commerce Act is more comprehensive than the Kentucky Railroad Commission Act. The Court held in the *Daniger* case, that if there was a duty on the carrier to accept the shipment for transportation, it was a common-law duty, and the complainant's remedy was not to file a complaint before the Interstate Commerce Commission, but was to bring an action at law, to compel the acceptance of the shipments, or for damages for failure to accept said shipments; that if, under the law, it was the duty of the carrier to accept for transportation this kind of freight, the plaintiff could, in an action in equity, compel it to accept said freight in the future, and, by a common law action, could recover damages on account of its refusal to accept and transport said shipments in the past.

In *L. & N. v. F. W. Cook Brewing Co.*, United States Court of Appeals, Seventh Circuit, it was held that the Interstate Commerce Commission did not have authority to compel the railroad company to accept shipments of intoxicating liquors in Indiana to be transported to prohibition territory in Kentucky, but that whether or not the railroad company should accept said shipments was a question to be determined by the courts.

It is clear from these authorities, and from a careful reading of the powers and authority conferred on the Kentucky Railroad Commission by statute, that this Commission has no jurisdiction to enter-

tain a complaint based on the failure and refusal of the L. & N. Railroad Co. to accept and switch carloads of coal from the plant of complainant to industrial plants within the switching terminals at Henderson. Not only is it without authority to compel the Company to place cars for loading and to switch the cars to industrial plants in Henderson, or to make a rate for such service, but it is without authority to hear and pass on a complaint based on the failure and refusal of the railroad company to perform such service. If the complainant is entitled to this service and the same has been denied it, there is a proper and legal remedy. Any adjudication or award by this Commission touching the question involved would be void.

For the foregoing reasons, it is submitted, that the Commission is without power, under the statute, to require the performance of the service which the complainant is seeking herein to compel the defendant to perform.

## 2

As suggested in our argument on the special demurrer, it is our contention that the defendant is under no legal obligation to accept and carry coal from the plant of complainant to industrial plants within the switching terminals at Henderson. While it is the duty of a common carrier, by reason of certain privileges granted to and enjoyed by it, to receive and carry for all alike, its duty in this respect is subject to certain limitations.

In Am. and Eng. Ency. of Law, p. 158, in speaking of the extent and character of the duty of a common carrier, the author says:—

“It is the duty of every common carrier to receive for carriage and to carry the goods of any person tendered to it for transportation, provided they are such as it holds itself out as willing to carry and the party tendering them offers to pay its proper charge.”

The same author says, page 162,—

“The duty to accept for carriage and to carry goods tendered is not an absolute duty on the part of a carrier, but is subject to reasonable limitations and conditions. A carrier is not a common carrier as to every character of goods, but only as to such as he professes to carry; he may therefore refuse to accept for transportation goods of character which it is not his business or custom to carry, and which he does not hold himself out as willing or undertaking to carry.”

In Moore on Carriers, p. 98, the author says:—

“A common carrier of goods is not under obligation to accept and carry all personal property that may be offered to it. Its duty is limited to accepting and carrying property of such kinds, to and from such places, as it publicly professes and undertakes, or is accustomed, to carry, and has the facilities for so doing. If it has never assumed or offered to carry chattels of a certain class, except upon special terms exempting it from all the important duties and liabilities of a common carrier, it can not be made amenable in the character of a common carrier as to such property. The carrier may determine by public announcement or profession the kind of goods it will carry, the conveyances to be used, and the manner and time for transportation, the conditions fixed being such as are just and reasonable, and treating all alike.”

A number of cases are cited in support of the text, one of which is *Pfister v. Central Pacific R. R. Co. (Cal.)*, 59 Am. Rep., 404, in which the duty of common carrier was defined to be that of accepting and carrying property of a kind that it undertook, or was accustomed, to carry. A number of English cases are also cited, holding that a carrier can profess to carry a particular description of goods only, in which case it could not be compelled to carry any other kind; or it might limit its obligations to carrying from one place to another, as from Manchester to London, and it would not be bound to carry to and from intermediate points. The English decision of *Oxlade v. Northeastern R. R. Co.*, 1 C. B. N. S., 454, is cited, in which it was held that if a railroad company does not hold itself out as a common carrier of coal, it is not obliged to carry coal from station to station, or for coal merchants, and may restrict its carriage of coal for colliery owners from the pit's mouth to the station where such colliery owners have their depots.

In Elliott on Railroads, Section 1466, it is said:—

“The general rule that a railroad company is under a duty to carry goods properly offered for transportation is, as we have indicated, subject among other limitations and qualifications to the limitation that its obligation extends only to the kind of goods the Company undertakes to carry. In other words, railroad companies are common carriers only as to those goods which are of the kind usually or professedly carried.”

A great many authorities are cited supporting this statement.

Among them is a case holding that a railroad company which occasionally carries goods in passenger trains is not a common carrier of goods in such trains. And similarly railroads which occasionally carry passengers in freight trains do not thereby become as to those trains carriers of passengers.

In *Hutchinson on Carriers*, Section 144, it is said:—

“It has already been observed that no common carrier is a carrier for all kinds or classes of goods. This would be impossible. Therefore he can be made liable to damage for a refusal to carry such as are offered to him for that purpose, it must be made to appear that they were of the kind which he usually carried, or which, by his public profession, he was bound to accept for that purpose. The law will only impose the obligation upon him in this respect co-extensive with the public expectation which he has created by his course of business or the invitations he has publicly held out to those who may solicit his services.”

In this connection see, also, *Dixon vs. G. W. Ry. Co.*, 5 Eng. R. Cases, 358; *Harp v. Choctaw*, 118 Fed., 169; *Interstate Commerce Commission v. Cincinnati R. R. Co.*, 167 U. S., 479; *Kansas Pac. R. R. Co. v. Nichols*, 9 Kans., 243; *Johnson v. Midland R. R. Co.*, 4 Exch., 367.

The case of *Harp v. Choctaw*, *supra*, is applicable to the facts in this case. The opinion, in discussing the duty imposed by law on the carrier with respect to carrying freight, says:—

“All are to be treated alike. The answer to these questions, therefore, is that if the company is engaged in carrying coal, or permitting it to be loaded in its yards, in the manner stated, for one person, it can not lawfully deny it to another; but if it does not hold itself out as doing that kind of transportation, and is not in the habit of doing it for anybody, then no one had any right to complain.”

So far we have been able to find, no court of last resort has ever held that a railroad company is bound to carry all kinds of freight, under all circumstances and without discrimination. The right to restrict and to limit its duty of carriage is, of course, subject to the rule that the restriction and limitation are to be kept within the bounds of good faith and fair and reasonable conduct on the part of the carrier. So long as its limitations are kept within the bounds of good faith and reasonable conduct, and so long as it treats all persons similarly situ-

ated alike, it has the right to decline to receive and transport freight if its declination is based on reasonable grounds and does not work a discrimination against any shipper.

In *L. & N. R. R. Co. v. Central Stock Yards Co.*, decided by the Supreme Court of the United States at its October, 1908, term, it is said:—

“There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport, and deliver, all live stock consigned from the Central Stock Yards to anyone at the Bourbon Stock Yards. This also is based upon the sections of the Constitution that have been quoted. If the principle is sound every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified unless the railroad holds that property subject to greater liabilities than those incident to its calling alone.”

Applying the principle enunciated therein—viz.: that a railroad company in this state can not be required to receive at a point on its terminals and to switch, transport, and deliver shipments consigned to another point on said terminals,—it is submitted that there is no duty on defendant to switch coal for complainant from its mine to industrial plants on the Henderson terminals.

In the case at bar it was proved that the Louisville & Nashville Railroad Company does not engage, and has never engaged, in the switching of coal or other commodities from one industrial plant in the switching terminals of Henderson to another industrial plant within those terminals. It was also proved that it is not engaged, and has never engaged in this character or service in any other city or within the switching terminals at any other point. It can not be said, therefore, that the city of Henderson has been discriminated against, or that complainant has been discriminated against. The testimony shows that some switching of that kind was done at Mount Vernon, Ill., but

Mr. Compton's testimony fully explains the circumstances under which that service was performed at Mount Vernon. And it is submitted that his explanation is a sufficient justification for the performance of the service at that place, on the few occasions that it was performed. The Louisville & Nashville Railroad Company has not at any time held itself out as engaging in this kind of service at Henderson. It is true that on two occasions it performed the service for the Keystone Mining & Manufacturing Company; but on those occasions the purpose in performing it was to release cars that were loaded with coal,—the coal having been ordered by a purchaser and the order subsequently countermanded. The Company had the right at that time, under the provision in its tariff, as a matter of accommodation to the Keystone Mining & Manufacturing Company, and for the purpose of releasing cars, to switch these cars to industrial plants. The complainant can not contend that it has been misled by the defendant; for the testimony shows that, before the shaft was put down and before complainant contracted for side tracks, an officer of its company was notified by Mr. Compton that the L. & N. Railroad Co. would not furnish cars, to be loaded with coal, and switch them from complainant's plant to industrial plants in Henderson. The L. & N. Railroad Co., is engaged in the business of carrying coal and other commodities between stations on its line, but it is not, and has never been, engaged in switching commodities between industrial plants within its terminals, except where there is a transportation service in connection with a switching service or where, in performing the switching service, there is thereafter to be performed by it transportation service for which there will be assessed a transportation charge. This is fully explained by the testimony of Mr. Compton. To perform a switching service in connection with a transportation service for which a transportation charge is assessed, is an entirely different matter from performing a mere switching service between industrial plants located within the same terminals. It is not a discrimination, because the services are entirely different. It is certainly not an unjust discrimination. (See *L. & N. v. Commonwealth of Kentucky*, 22 Ky. Law Rep., 328.)

It would be an unreasonable requirement to impose upon a carrier the duty of furnishing cars to be loaded with coal, and of switching from one industrial plant to another within the Henderson terminals, or within any other terminals. The location of the mine of the complainant is unique. There are few productive or mining in-

industries so singularly situated. There is no general demand for a service of this kind, and no public necessity for it. To require defendant to engage in such a service—not now engaged in—to accommodate an industry so singularly situated, would, we submit, be unreasonable.

The tariff provision for switching in the Henderson terminals, whereby the L. & N. Railroad was to switch at an expense of \$2.00 per car, plus \$2.00 per car for car rental, was issued for the purpose of taking care of some unforeseen mishap or emergency, and then to be done only in a case of emergency.

It is perfectly apparent, from the testimony of Mr. Compton, that the tariff provision covering switching, for which a rate is published to cover, applies only where the same precedes or follows a transportation service. Where it follows a transportation service, if the transportation service is on the line of another carrier, the switching charges are assessed; if on the line of the L. & N., no switching charges are assessed. The same rule applies where it precedes a transportation service. The L. & N. Railroad Co., does not compete with drays and transfer companies. And, it is submitted, it is not reasonable to require it to compete with them. The Company was organized for the purpose of engaging in the transportation of passengers and freight between points and stations on its line. It was never contemplated that it should engage in the switching of freight between industrial plants located on the terminal facilities of the same station.

In *Kentucky and Indiana Br. Co. v. L. & N. R. R. Co.*, 2 L. R. A., 289, it was held that where a carrier which is under no legal obligation to do so, voluntarily contracts to switch cars over its tracks between two or more railways, for which service it collects a certain switching charge for switching cars, loaded or empty, but charges no tariff rates on the freight transported, or transferred, in the cars, such carrier, in the performance of such service, assumes none of the responsibilities of a common carrier, but only those of a switchman. In respect to cars or traffic thus handled, such corporation can be regarded as a switchman or transfer company only; and it is no more a common carrier of interstate commerce, or traffic within the provision of the law, than a city transfer company, which checks a passenger's baggage at the hotel where it is received, and carries it for an agreed compensation, to the station of the railway over which it is to be transported. The decision in this case seems to us to be decisive of the question of the right of a railroad company, although engaged as a common car-

rier in receiving and transferring freight, to refuse to engage in the unusual business of switching cars between industrial plants located on the same terminals.

In view of the fact that defendant is not holding itself out to the public, and has never held itself out, as engaging in the switching of freight between industrial plants within the terminal limits, and considering that the performance of such a service would not be a great benefit to the general public, it is submitted that its refusal to engage in that kind of service is a reasonable regulation which it, as a common carrier, has the right to establish.

3.

While it is our contention, first, that there is no constitutional, nor statutory, authority in the Commission to grant the relief sought by complainant; and, secondly, that if there is such authority, there is no legal obligation on the Company to perform such service, inasmuch as it has never held itself out as engaging in that kind of service, and its refusal to engage in that kind of service is a reasonable regulation which it has the right to establish; still, if the Commission is of opinion that these contentions are wrong, we contend that the complainant has no case of merit, because there is no evidence to show that the complainant has been discriminated against, and if it is the duty of the defendant to make a rate on coal in carload lots from complainant's plant to industrial plants in Henderson, a reasonable rate would be fifty cents per ton. And, furthermore, if this is a reasonable rate, such a rate was offered complainant on July 13, 1908, which offer remained open for more than a month, but complainant failed to accept said offer or to make a single shipment on said rate, and, moreover, notified defendant that it would not use said rate, and complainant now says that it would not use this rate. This evidence is uncontroverted. If the rate of fifty cents per ton is reasonable—provided it is the Company's duty to make a rate at all,—how, then, can the complainant be benefited by the Commission's requiring the Company to make such a rate, when the complainant admits that it would not use the rate? And if the rate is reasonable, how, then, has the complainant been damaged, or how is it entitled to any award of reparation, because of the failure of the Company to make such a rate during all the time complained of, when the complainant admits that it would not have used the rate at all? Independently of the admission on the part of complainant that it would not have used such a



rate, and could not now use such a rate, the testimony shows that coal can be delivered in wagons to the industrial plants in Henderson, at from thirty to thirty-five cents per ton. It further shows that during all this time the complainant has solicited business from industrial plants in Henderson, and has sold all the coal that it could possibly sell to said industrial plants, except three or four plants, according to Mr. Bosserman's statement. His statement is contradicted by the testimony of Mr. Powell, to the effect that none of these plants promised to purchase coal from the complainant, and that the coal bins of all the plants, with one exception, are accessible by wagons. Under the testimony offered, there can be no question as to the reasonableness of a rate of fifty cents per ton on coal from the mine of the complainant to industrial plants in Henderson. The evidence shows that it is the custom to blanket rates, making the same rates on the same commodity, to the same points, from a territory embracing a great many miles in area. Fifty cents per ton is the rate on coal from the mine at Basket—seven miles from Henderson,—and from points a greater distance from Henderson. It is in evidence that the cost to the Company of placing an empty car at the mine of complainant and moving it, after it is loaded, to industrial plants within Henderson is as great as, if not greater than, the cost of performing a similar service for mine owners at Basket. Many of the other mines on that division are located at stations where regular stops are made by regular trains, where the cars can be set out of regular trains and picked up by regular trains, without any extra cost or trouble; whereas, to handle coal from the mine of complainant to industrial plants in the city of Henderson would require the use of a special engine to take the car to the mine and then to move the loaded car to the industrial plant. The cost of performing the service for the complainant is unquestionably as much as, if not more than, the cost of performing the same service for the mine of the Henderson Division. It therefore can not be contended that the complainant is entitled to a lower rate than that given other mine owners in the territory covered by the fifty-cent rate. How, then, has complainant been discriminated against? And will the Commission exercise a power which—to say the least—it is doubtful that it possesses under the law, and require the defendant to make a rate for the performance of a service which it is probable that the law does not require it to perform?—when the net result will not benefit the complainant, because the complainant will not avail itself of the rate,

but, on the contrary, will establish a precedent that will work a great hardship on defendant and will necessarily impose upon it, because of the question of policy involved, the duty of contesting in the courts the validity of the Commission's ruling.

There has been no discrimination against the complainant, because the defendant has performed no such service for any other person. While cars have been switched for some of the milling industries at Henderson, the switching service in those instances was performed in connection with a transportation service. Such a service is easily distinguishable from the service which the complainant seeks to compel the defendant to perform.

In *Dixon vs. Central of Ga., Ry. Co.*, 35 S. E., 369, it was held that a switching, or transfer, service is one which applies only to such shipments on which legal freight charges have already been earned or are to be earned. This is the uniform definition of a switching service given by the courts.

In *Louisville & Nashville R. R. Co. v. Commonwealth*, 22 Ky. Law Rep., 328, on an indictment, under Section 819 of Kentucky Statutes, for unjust discrimination in freight rates for the transportation of coal, the specific offense with which appellant was charged was the giving of a rebate of thirty cents to the Lebanon Roller Mills Co. and refusing to give such a rebate, or any rebate, to Shreve, a coal dealer at Lebanon. While a large part of the coal shipped to the Milling Company was of an inferior grade, and not the kind used by Shreve, the proof showed that some lump coal was shipped to the Milling Company, being the kind shipped to Shreve, and that a rebate was given the Milling Company on the lump coal. The court held that Sections 817, 818, and 819 of Kentucky Statutes were passed for the purpose of making effective Section 215 of the Constitution; and that inasmuch as the milling company used the coal shipped to it to manufacture flour, which was shipped over the Company's road—thus giving to the Company two freights,—the Railroad Company could lawfully make a lower rate to the Milling Company than to the coal dealer, who sold his coal in Lebanon and did not give to the Company two freights; and that the Railroad Company was not guilty of unjust discrimination:

It is contended that, on account of the nearness of complainant's plant to the city of Henderson, a rate of fifty cents per ton is too high. This position, we submit, is untenable. The uncontroverted evidence

shows that the cost of handling coal from complainant's mine to the industrial plants in Henderson would be as great as, if not greater than, the cost of handling it from the other mines on the Henderson Division to said plants. If rates were graduated wholly on a mileage scale, then the mine owner ten miles from Henderson, who pays a rate of fifty cents per ton on his coal, could justly insist that the Company should charge the mine owner twenty miles from Henderson a rate of \$1.00 per ton. The purpose of blanketing rates is to give to shippers in a given territory opportunities to compete with one another, and to afford to the consumer a larger market. To require the defendant to make a lower rate than fifty cents per ton to the complainant, would give the complainant an unfair advantage of other coal operators in that territory; it would be an unjust discrimination against them. The complainant is itself seeking a discriminatory rate that would be unfair to its competitors. It now has an advantage over its competitors, of fifteen or twenty cents per ton, on the cost of delivery of coal to industrial purchasers in Henderson. Granting that this advantage is natural, and that it is due to location, as suggested by counsel for complainant, we submit that this Commission ought not to increase that advantage or to give to the complainant a lower rate than that given to other mine operators in that field. It might also be said that the mine operator five miles from Henderson has a natural advantage over the operator ten or fifteen miles from Henderson, in that he could, if necessary, deliver his coal at Henderson in wagons cheaper than could the other operators. But he pays the same rate that the other operators in that territory pay. To give him a lower rate would be unfair to the others.

One of the strongest reasons why the defendant should not be required to perform this service, and why it has not performed it, is that the public interest does not demand such a service. If coal from this mine could not be delivered to consumers in Henderson except by rail, there might be some force in complainant's argument. No one would be benefited by a service of this kind, except the complainant, and it would not be benefited unless the rate were fixed below thirty cents—the cost, per ton, at which it can now deliver coal to consumers. Such a rate would not be a reasonable compensation for the service.

The complainant has not been discriminated against. The complainant, like every other industrial plant in Henderson, is entitled to, and has been afforded, switching service where the same is an auxilli-

ary to a transportation service; it has been treated like every other industrial plant. The service which it asks the Commission to require the defendant to perform has not been performed for other industries at Henderson or elsewhere. Defendant's refusal to engage in such service is a reasonable regulation. When the Company offered to engage in the service, the complainant was not willing to pay a reasonable rate for the same; it is not now willing to pay such a rate. We therefore submit that its complaint ought not to be entertained.

The doctrine of estoppel can not be invoked on behalf of complainant. The railroad company by reason of its contract with the mining company did not obligate itself to do a switching business between the mining company's plant and other plants within the Henderson terminals. The evidence shows that before the side track was built the mining company was given to understand that the railroad company would not engage in that kind of service. It further shows that the railroad company would not agree to construct a side track except for the purpose of enabling the mining company to load and ship coal from its mine to points outside of the Henderson terminals. The complainant was not misled into believing that the defendant would perform this kind of service; for it was expressly understood, before and at the time the side track was constructed, that the defendant would not perform such a service. The defendant's refusal to perform such a service is not, therefore, a repudiation of any obligation to the mining company.

TO SUMMARIZE: We submit that the Commission is without power and authority to order or require the service which complainant seeks. But if the Commission should decide against us on that point, we contend, and ask the Commission to hold: (1) that, under the authorities cited, a railroad company, as a carrier, has the right to refuse to engage in the service of carrying a certain commodity under peculiar conditions, such as obtain in this case, and especially where the service sought is not between points on its line but between industrial plants on side tracks of the same terminals, and where it has not held, and does not hold, itself out as engaging in said service but expressly disclaims engaging in said service; (2) that the defendant is not estopped from declining to engage in the service, inasmuch as the side track at complainant's mine was constructed with the express understanding that defendant would not switch coal in carloads from said mine to industrial plants on the Henderson terminals, and

was constructed for the sole purpose of receiving and loading cars to be shipped to points outside of said terminals; (3) that if the service sought to be enforced is purely a switching service, defendant, under the law, is not compelled to engage therein, but if it is compelled to engage in said service, it is entitled to a reasonable compensation—which, according to the uncontradicted evidence, is fifty cents per ton. If said service is a transportation service, defendant has a right to refuse to engage in it; because defendant has never held itself out, and is not now holding itself out, as engaging in said service, and the same is not a public necessity; but by reason of the unusual location of complainant's mine, and the peculiar and unique conditions by which it is surrounded and under which it is operated, the refusal of defendant to engage in said service is a reasonable regulation, which it, as a common carrier, may legally establish.

Respectfully submitted

(Signed)

WM. G. DEARING,

CHAS H. MOORMAN.

*Attys. for Defendant.*

#### ORDER.

This case having been submitted to the Commission on the pleadings, evidence, exhibits and arguments of counsel, and the Commission being advised, is of the opinion that the complainant is entitled to the following relief:

That the defendant, Louisville & Nashville Railroad Company, should place coal cars on complainant's sidings at its mines to be loaded with coal, and when loaded, take up and transport cars so loaded with coal to the points of destination; and for such transportation may charge, collect and receive a just, reasonable and non-discriminatory freight rate.

It is therefore ordered by the Commission that defendant, Louisville & Nashville Railroad Company, place coal cars on complainant's siding at its mines to be loaded with coal, and when so loaded, to take up said cars, so loaded, and transport the same to points of destination, at just, reasonable and non-discriminatory freight rates.

(Signed)

A. T. SILER, *Chairman,*

L. P. TARLTON, *Commissioner,*

JOHN P. HASWELL, JR., *Commissioner.*

A. J. MAY, COUNTY ATTORNEY OF FLOYD COUNTY,  
KENTUCKY, ET. AL., -----Complainants,

*vs.*

CHESAPEAKE & OHIO RAILWAY COMPANY, -----Defendant.

A. J. and Wm. H. May, Attorneys for Complainant.

W. S. Harkins, Worthington, Cochran & Browning, Attorneys  
for Defendant.

### STATEMENT.

This was a complaint as to station facilities at Prestonsburg, Kentucky, on the Big Sandy Division of the Chesapeake & Ohio Railway. An investigation was ordered, and proof taken at Ashland, Kentucky, January 4th, 1909, resulting in a very voluminous record, revealing the fact that prior to the construction of a highway bridge across the river at Prestonsburg, no complaint had ever been made as to station facilities.

The town of Prestonsburg, with a population of less than 1,000, is situated on the opposite side of the river from the line of C. & O. Railway. Directly across the river from this town is a high cliff, several hundred feet in height. In constructing the railroad it was necessary to blast out considerable rock along the river bank in order to get a roadbed. When the present station was located, there was not even a thought of any other location than the present one, which is 2,000 feet down the river from point opposite location of town, and the location of Prestonsburg bridge. At this point near the mouth of Middle Creek, Kentucky, was found sufficient room for a station, and side tracks. It was here that this station, and other facilities were constructed at a cost of something like \$14,000.00. Passengers to and from Prestonsburg in order to reach this station must walk alongside the railroad track in order to reach Prestonsburg bridge. Upon investigation this roadway was found to be in a very bad condition, but upon notice from this Commission, same was reconstructed, and is as good, if not better than the average walk found to stations at other towns.

Prior to construction of this highway bridge, a gasoline motor boat met all trains, and for the same toll charged to cross bridge passengers were carried to the town of Prestonsburg, relieving them of this walk of 2,000 feet alongside the company's track.

Complainants first sought to have Chesapeake & Ohio Railway Company change location of passenger and freight depot, but this was found to be impossible from the fact that there was not room enough at the end of Prestonsburg bridge to admit of construction of a suitable passenger or freight depot. Also that it was impractical, because of the insufficient room for the ingress or egress of teams, from all points in the vicinity of Prestonsburg.

Complaint was amended, and it was then sought to require Chesapeake & Ohio Railway Company establish what is known as a flag stop at Prestonsburg bridge, opposite the town of Prestonsburg. This would have necessitated the stopping of all passenger trains at that point, resulting in two stops within 2,000 feet of each other. Investigation into the passenger earnings of the company at this point, convinced the Commission of the hardship such requirement would work on the company, as well as setting a precedent that would tend to encourage complaints from other sources where the conditions are no better than at Prestonsburg, and where changes in such conditions would be just as impractical as at point complained of in the above complaint.

For the reasons above set forth the complaint was dismissed, and the following order entered:

#### OPINION AND ORDER.

This case having come on for hearing and trial, and the Commission having fully investigated the case by taking and hearing proof, both oral and verbal, and having gone on the ground at Prestonsburg to examine and investigate the situation, and the Commission having been legally advised in this case by James Breathitt, Attorney General of Kentucky, is of the opinion that complainants are not entitled to the relief requested.

It is therefore ordered that this complaint be and same is now hereby dismissed.

This October 6, 1909.

(Signed) A. T. SILER, *Chairman*,  
L. P. TARLTON,  
JOHN P. HASWELL, JR.

TAYLOR PROCTOR AND OTHERS, -----Complainants,

vs.

SOUTHERN RAILWAY IN KENTUCKY, -----Defendant.

BRADLEY & CURETON  
AND E. B. BEARD

*Attorneys for Complainants.*

TODD AND WILLIS, *Attorneys for Defendant.*

HELD.

1. That the facts tend to show that Southern Railway Company in Kentucky encouraged complainants to build up a great and profitable milk industry at points mentioned in complaint, at the expense of much time, labor and money.

2. That a railroad corporation created by a State is for all purposes of local government a domestic corporation, and its railroad within the State is a matter of domestic concern, even when its road connects—as most railroads do—with railroads in other States; and the State which created the corporation may make all needful regulations of a police character for the government of the corporation while operating its road in that jurisdiction.

3. That Southern Railway Company in Kentucky should stop train No. 24, westbound, each morning at Waddy, Ky., and at Hemp Ridge, Ky., to pick up and transport milk furnished by the dairymen and shippers from back of these stations.

Complaint as to Joyes Station, Veachdale and Clarks dismissed.



## COMPLAINT.

TAYLOR PROCTOR AND OTHER CITIZENS OF THE  
LOCALITY OF WADDY, KY.; E. W. MCCORMICK  
AND OTHER CITIZENS OF THE LOCALITY OF  
HEMP RIDGE, KY.; J. V. GLASS AND OTHER CIT-  
IZENS OF THE LOCALITY OF JOYES STATION, KY.;  
GEO. O. WRIGHT AND OTHER CITIZENS OF THE  
LOCALITY OF VEECHDALE, KY.; C. E. BRYANT  
AND OTHER CITIZENS OF THE LOCALITY OF  
CLARKS, KY. } *Complainants.*

vs.

THE SOUTHERN RAILWAY COMPANY IN KENTUCKY-----*Defendant.*

The above named complainants acting for themselves, and all the other citizens in their respective localities respectfully represent that in the vicinity of Waddy about fifteen or twenty persons are engaged in the dairy business, producing about two hundred to two hundred and fifty gallons of milk on an average per day for shipment to market. That in the vicinity of Hemp Ridge about twelve or fifteen persons are engaged in the dairy business, producing from one hundred and seventy-five to two hundred gallons of milk per day for shipment. That about ten are engaged in the dairy business in the vicinity of Joyes Station, producing from one hundred to one hundred and fifty gallons of milk per day for shipment. That about twenty persons are engaged in the dairy business in the vicinity of Veechdale, producing for shipment per day from two hundred to three hundred gallons of milk. That about fifteen or twenty persons are engaged in the dairy business in the vicinity of Clarks, Ky., producing for shipment per day about four hundred to six hundred gallons of milk.

That the Southern Railway Co., up to last November, 1908, furnished reasonably good facilities for the shipment of milk from the above named stations along the line of the Southern Railway in Kentucky to Louisville, stopping train No. 24, for the purpose of receiving such shipments, and that since last November, 1908, said railway company has failed and refused to furnish reasonable facilities for said shipments, and still fails and refuses to furnish such facilities. The complainants state that said railway company can derive large revenue from the traffic above mentioned, and can operate its road at a profit

by furnishing same, as it did heretofore. That said railway company furnishes such facilities to the citizens in the locality of Shelbyville, and to the citizens in the locality of Fisherville, along its line of road; that Louisville is the only market these shippers can obtain for their products; that the nature of these products is such that its value is destroyed unless it reaches the market within a reasonable time in the morning. That all these shippers have been notified by various milk dealers in Louisville that they will not purchase or receive their products if shipped over the Southern Railway in Kentucky on the present schedule of trains; that under the present schedule of trains said complainants and these localities are placed at an undue and unreasonable disadvantage, and unjust and unreasonable disadvantage, and unjustly and unreasonably discriminated against by said railway company; that many other persons along this line of road will engage in this business, and greatly increase the revenues of said road.

Wherefore they pray that said railway company be required by the Commission to furnish reasonable facilities for the transportation of the above named products, either by stopping Train No. 24 at the above stations for the above purpose, or by furnishing an early train that will stop at these stations; or so changing the schedule of its trains that this product can reach the market without unreasonable disadvantage, and that said Commission make an order compelling said railway company to cease this discrimination against these localities.

(Signed)

E. B. BEARD AND N. C. CURETON,  
*Attorneys for Complainants.*

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To this complaint, defendant made oral answer at hearing in the city of Shelbyville; the case being then, and there submitted, and the following opinion and order entered.

#### OPINION AND ORDER.

This complainant, Taylor Proctor, complaining for himself, and others, in the vicinity of Waddy, Kentucky, alleges and proves that he and his associates produce about 250 gallons of milk daily for the

Louisville market, and that the Southern Railway Company is now refusing to furnish reasonable and proper facilities for the shipment of their milk to Louisville.

It is also alleged and proved that prior to November 1, 1908, the Southern Railway Company in Kentucky, stopped its train No. 24 at Waddy, Kentucky, and took on the milk produced by these complainants and carried same into the City of Louisville for use, but on November 1, 1908, and since that time, the said Southern Railway Company, defendant herein, has refused to, and does now refuse, to furnish proper facilities to carry this milk to the Louisville market. Prior to said November 1, 1908, this defendant stopped its train No. 24, running between Danville and Louisville, at Waddy, Kentucky, for the purpose of carrying the milk produced by these complainants, which service was entirely satisfactory to complainants.

The evidence in this case shows that if some facilities are not furnished by the Southern Railway Company to carry the milk product from Waddy, Kentucky, the farmers and dairymen in the community of Waddy will sustain a great loss. This loss can be prevented and evaded by the Southern Railway Company in Kentucky, by stopping its train No. 24 at Waddy, Kentucky, on each morning to pick up this milk, and for the purpose of carrying same to the Louisville market.

The defendant herein contends that under section 772a, Kentucky Statutes, it is doing all that the law requires of it when it runs at least one passenger train each way on every day in the year and alleges and proves that it has performed this service.

The facts which developed in this case show that dairymen were encouraged by the Southern Railway Company in Kentucky, to build up a great and profitable milk industry, and that they have built up such an industry at the expense of much time, labor and money.

"A railroad corporation created by a State is for all purposes of local government a domestic corporation, and its railroad within the State is a matter of domestic concern, even when its road connects, as most railroads do, with railroads in other States, and the State which created the corporation may make all needful regulations of a police character for the government of the corporation while operating its road in that jurisdiction. It may prescribe the location and the plans of construction of the road, the rate of speed at which trains shall run, and the places at which they shall stop, and may make any other reasonable regulation for their management in order to secure

the objects of the corporation, and the safety, good order, convenience and comfort of the passengers and of the public."

Lake Shore and M. S. Co. v. State of Ohio, 173 U. S. 285.

The Court of Appeals of Kentucky in case of the Commonwealth vs. Louisville & Nashville Railroad Company, decided in 1905, 27 Kentucky Law Reporter, 497, says:

"The power to regulate the relative rights and duties of the railroads and the public in this State has, in large measure, been delegated by the Legislature to the Railroad Commission. \* \* \* \*

In view of the authorities cited, the Commission is of the opinion that it has jurisdiction of this case, and that it should prescribe a reasonable regulation in this case, which will give these complainants their reasonable rights.

It is shown herein that the citizens in the locality of Shelbyville and Fisherville are furnished with the shipping facilities which are required by the complainants of Waddy and Hemp Ridge. It is our judgment that the Southern Railway Company in Kentucky, in refusing to stop its train No. 24 at Waddy, Kentucky, or in failing and refusing to provide some other facility at a proper time, to haul the milk produced by the dairymen of Waddy, to Louisville, Kentucky, subjects the said citizens and shippers of Waddy to an undue prejudice and disadvantage.

The Commission does now hereby refuse to exonerate the Southern Railway Company, in Kentucky, from the performance of its said duties toward the citizens and dairymen of Waddy, Kentucky, in providing proper facilities for carrying its product to the Louisville market, under the provisions of the Kentucky Statutes.

The Commission recommends that the Southern Railway, in Kentucky, stop its train, No. 24, which goes west each morning, at Waddy and Hemp Ridge to pick up and transport the milk furnished by the dairymen and shippers from each of these stations.

The same facts, rulings and law apply to Hemp Ridge as apply to Waddy, and this order extends to the requiring of the Southern Railway Company, in Kentucky, to stop its train, No. 24, going west each morning at these two stations.

In this same complaint J. V. Glass, and other citizens, of Joyes Station, George O. Wright, of Veechdale, and C. E. Bryant, and other citizens of Clarks, make the same complaint in behalf of themselves and others living at or near their respective stations. The

proof, however, shows that the citizens and shippers who live in the location of Joyces Station, the citizens and shippers who live in the location of Veechdale, and the citizens and shippers who live in the location of Clarks, are all now reasonably well served by the Louisville & Nashville Railroad, which also runs west, and parallel to the Southern Railway between Shelbyville and Louisville. These last named stations, three in number, are all located west of Shelbyville, and while they may be subject to some inconvenience, it seems to us that it would be unreasonable at this time and under the present state of facts, to require the Southern Railway Company, in Kentucky, to stop its train, No. 24, for them.

It must be understood that the railroad companies are obligated to furnish a suitable through service, and every obstacle that can be reasonably removed from interfering with their efforts in this direction should be done.

The last three named stations enjoy many more superior advantages than do the stations of Waddy and Hemp Ridge. The people of Waddy and Hemp Ridge have no other railroad over which they can ship their product, and hence they must be provided with some kind of service which will help them to market their product. The Commission has, therefore, granted them the relief sought in this order, but the Commission does not see its way clear to extend the order to Joyces Station, Veechdale and Clarks, because the people at these last three named points can, with little difficulty to them, be served by the Louisville & Nashville Railroad Company, which stops its trains at Long Run, Simpsonville, Scott's Station and other points on its line, which are parallel and adjacent to the stops on the Southern Railway Company's line west of Shelbyville. The Commission, therefore, dismisses the complaint as to Joyces Station, Veechdale and Clarks. The Commission reserves the right to make and issue such orders upon such matters herein as may be deemed just and proper.

It is further ordered that a copy of this order be furnished to the defendant, Southern Railway Company, in Kentucky, and that a copy of same be furnished the attorney for complainants in this case.

This the 8th day of May, 1909.

(Signed)

A. T. SILER, *Chairman*,  
MCD. FERGUSON,  
L. P. TARLTON,

CITIZENS OF GEORGETOWN, KY. ----- *Complainants.*

vs.

C. N. O. & T. P. RY. Co. ----- *Defendants.*

MEMBERS OF GEORGETOWN COMMERCIAL CLUB, *for Complainants,*  
GALVIN & GALVIN, AND MURRAY R. HUBBARD, *for Defendant.*

This was a complaint alleging inadequate depot facilities at Georgetown, Kentucky. The Commission after hearing a delegation from the Commercial Club of the city of Georgetown, made a personal investigation of the conditions by going upon the ground and directed the following notice to the C. N. O. & T. P. Railway Co:

June, 3, 1908.

MR. HORACE BAKER,  
*General Manager C. N. O. & T. P. Ry. Co.,*  
Cincinnati, O.

DEAR SIR:

The Railroad Commission for Kentucky hereby serves notice on the Cincinnati, New Orleans & Texas Pacific Railway Company, under section 772 of the Kentucky Statutes, that it is its duty to rebuild its passenger and freight stations at Georgetown, Kentucky, which stations were destroyed in October and February last. It is the unanimous opinion of the Commission that the rebuilding of these stations should be immediately begun, and you are notified to take such steps as will put this opinion in execution. The Commission is of the opinion that you should give Georgetown such a depot as will be acceptable to the Commercial Club of Georgetown and will meet the approval of the Railroad Commission.

Done by order of the Commission.

D. B. CORNETT,  
*Secretary.*

Cincinnati, O., Aug. 7, 1908.

Messrs. A. T. SILER, Chairman.

L. P. TARLTON, Commissioner.

McD. FERGUSON, Commissioner.

Railroad Commission, Frankfort, Ky.

GENTLEMEN:

I beg to acknowledge receipt of your communication of the 5th inst. in regard to rebuilding of the freight and passenger depots at Georgetown, Ky., which were destroyed by fire some months ago.

The matter of putting up a combination building to take care of both passengers and freight is being given attention by this company and the Southern Railway as the depot will be jointly occupied.

The building we contemplate putting up will be a credit to Georgetown, and the blue prints and plans are now being prepared. On account of the financial conditions we have been obliged to postpone a great many improvements we had under contemplation; in fact, we have been passing through a very critical condition as you no doubt are aware.

With assurance that the matter has not been lost sight of, I beg to remain.

Yours very truly,

H. BAKER,

*General Manager.*

A depot has been constructed at Georgetown in compliance with Commission's orders.

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W. A. SAMUELS AND OTHERS-----*Complainants.*

*vs.*

C. & O. RY. CO. -----*Defendant.*

#### DEPOT FACILITIES AT MT. STERLING.

This complaint was filed in 1908, alleging inadequate depot facilities at Mount Sterling. After an investigation of the case, the Commission gave defendant notice to construct new depot at Mt. Sterling, and same is now in course of construction.

Following is copy of a letter received from one of the Complainant's:

Mt. Sterling, Ky., October 18, 1909.

HON. A. T. SILER,  
Williamsburg, Ky.

DEAR SIR:

Allow me, upon behalf of the people of Mt. Sterling and Montgomery county, as well as for myself personally, to extend to you our sincere thanks for making our new depot, which is now in process of construction, a reality. This needed improvement will be completed within the next few months and from the plans will be a very handsome one indeed. To you, for your untiring efforts in our behalf, as well as the other members of the Railroad Commission, we owe a debt of gratitude, acknowledgment of which our citizens desire to make, through me.

Again thanking you, I am,

Very truly,

(Signed)

W. A. SAMUELS.





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# INFORMAL COMPLAINTS

## 1909

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## INFORMAL COMPLAINTS, 1909

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CREEKMORE & FROST,

Requests for Car Supply.

C. N. O. & T. P. Ry. Co.

Granted by defendant.

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BAVARIAN BREWING Co.,

*vs.*

Requesting reduction in rate on empty beer packages returned.

L. & N. R. R. Co.

Dismissed.

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JONAS WEIL,

*vs.*

L. & N. R. R. Co.

This was a complaint filed by Jonas Weil, and others, relative to rates on stock cattle. Defendants granted all concessions demanded by complainant.

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S. E. ADAMS,

*vs.*

Rate on clothing from Cincinnati, Ohio.  
to Jeffersonville, Indiana.

L. & N. RAILROAD Co.

Dismissed, with directions to take up with Interstate Commerce Commission.

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B. JOHNSON & SON,

*vs.*

Rate on ties, from Kentucky points to Jeffersonville, Ind.

LOUISVILLE, HENDERSON & ST. LOUIS Ry. Co.,

Dismissed, with directions to take up with Interstate Commerce Commission.

J. B. SPENCE,

*vs.* Overcharge on fertilizer.

L. & A. R. R. Co.

Voucher issued by defendant covering overcharge.

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NEW SOUTH BREWERY AND ICE COMPANY,

*vs.* Rates on beer, Middlesboro, Ky., to Bowling Green, Ky.

L. & N. R. R. Co.

Pending.

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STEWART MAYERS,

*vs.* Relative to demurrage and storage charges. Complaint that insufficient time was given to get consignments of freight before charging storage.

LOUISVILLE & ATLANTIC R. R. Co.

Defendant directed to comply strictly with Kentucky Demurrage Rules.

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KENTUCKY LUMBER Co.,

*vs.* Overcharge of \$85.60 on lumber from Dilley, Tenn.

L. & N. R. R. Co.

Requested by Commission that defendant refund overcharge (Interstate case.)

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MAYFIELD WATER & LIGHT Co.,

*vs.* Rates on steam coal, Kentucky mines to Mayfield.

ILLINOIS CENTRAL R. R. Co.

Pending.

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J. WALKER MUIR,

*vs.* Overcharge of 12 cents passenger fare between Paris and Mt. Sterling, Ky.

L. & N. R. R. Co.

Dismissed with instructions to defendant to refund.

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GEORGE A. HOLTON,

*vs.* Rate on coal, Cannel City, Ky., to Dry Ridge, Ky.

C., N. O. & T. P. Ry. Co.

Pending.

W. E. HOUSTON,  
vs. Stopping of fast passenger trains at Olympia, Ky.  
C. & O. Ry. Co.  
Dismissed.

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E. C. HOLLIDAY,  
vs. Storage Rules, Jackson, Ky.  
LEXINGTON & EASTERN RY. CO.  
Adjusted and dismissed.

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J. S. HOWARD,  
vs. Storage of freight at East Bernstadt.  
L. & N. R. R. Co.  
Pending.

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J. C. RICHARDSON, ET AL.,  
vs. Requesting joint tariff rate on coal.  
L. & A. RY. CO. AND L. & N. R. R. CO.  
Pending.

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R. H. PERKINS,  
vs. Rate on brick, Jellico, Tenn., to Williamsburg and  
Corbin.  
L. & N. R. R. Co.  
Pending.

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S. ROY CONOVER,  
vs. Rate on solid bored colonial columns from Camp-  
bellsville, Ky., Jeffersonville, Cincinnati and  
Chicago.  
L. & N. R. R. Co.  
Dismissed.

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STUART & O'BRIEN,  
vs. Rate on straw from Shawhan, Ky., etc., to Middles-  
boro, Ky.  
L. & N. R. R. Co.  
Pending.

OHIO VALLEY TIE COMPANY-----Complainant,  
 vs.

Alleged overcharge of \$271.59 in applying rate on shipments of cross-ties to Frankfort, Kentucky, originating at points on Ohio and Kentucky Ry. and routed via Lexington and Eastern Railway, C., N. O. & T. P. Railway and Frankfort and Cincinnati Railway.

OHIO & KENTUCKY RAILWAY COMPANY,  
 LEXINGTON & EASTERN RAILWAY COMPANY,  
 CINCINNATI, NEW ORLEANS & TEXAS

PACIFIC RAILWAY COMPANY, AND

FRANKFORT & CINCINNATI RAILWAY COMPANY-----Defendants.

#### OPINION AND ORDER.

The above styled complaint together with all correspondence and the complete file thereof having been submitted informally to the Commission, and the Commission having fully read and considered the same, and it appearing from said correspondence that defendants concede that the eleven cents (11c) rate for the transportation of cross ties from points on the Ohio & Kentucky Railroad to Frankfort, Kentucky, is fair and reasonable rate, and the Commission being now fully advised is of the opinion that no more than eleven cents should be charged for the transportation of cross ties from and to said points, and it further appearing that each of the defendants is willing to refund to complainant its proper proportion of the charge made in excess of said eleven cents rate, and it appearing to the Commission that it is proper that said refund be made, and that complainant is entitled to recover of said defendants the full amount of their claim of two hundred and seventy-one dollars and fifty-nine cents (\$271.59) to be apportioned between defendants on the basis of their Louisville-Cincinnati rate as shown by their tariffs, consent is now given by this Commission that said claim be paid in full by defendants, and it is so ordered.

It is further ordered that a copy of this order be furnished to complainant and each of said defendants.

(Signed)

A. T. SILER,  
*Chairman.*  
 L. P. TARLTON,  
 J. P. HASWELL, JR.,  
*Commissioners.*

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# Articles of Incorporation Filed, 1909

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## ARTICLES OF INCORPORATION FILED, 1909

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*January 11.* Amended Articles of Incorporation filed by the Kentucky Valley Railroad Company, changing the principal office and place of business of the corporation to Louisville, Kentucky.

*February 13, 1909.* The Chesapeake & Ohio Railway Company filed copy of General Funding and Improvement Mortgage to United States Mortgage and Trust Company, and William H. White, trustees.

*March 17, 1909.* Carolina, Clinchfield and Ohio Railway of Kentucky, filed Articles of Incorporation, and affidavit of two Directors as to subscription of capital stock. Principal office and place of business at Pikeville, Kentucky. Nature of the business, objects and purposes proposed to be transacted, promoted and carried on are to purchase lease or otherwise, acquire, construct, maintain and operate a railroad wholly within Pike county, Kentucky, which it is intended to be constructed from a point at or near the mouth of Elkhorn Creek where the same flows into Big Sandy River in said county (Pike) southward through a portion of said county, to the boundary line between the State of Kentucky and Virginia at a point known as the Breaks of the Big Sandy River, and the length of such railroad, as near as may be specified, shall be about six miles. Amount of capital stock, five thousand (\$5,000) dollars, and the same divided into fifty shares of the par value of one hundred (\$100.00) dollars each. Name of stockholders and shares of stock subscribed by each as follows: Mark W. Potter, New York, N. Y., three shares; George L. Carter, Johnson City, Tenn., thirty-two shares; Carl M. Owen, New York, N. Y., three shares; J. Norment Powell, Johnson City, Tenn., three shares; E. S. Jouett, Winchester, Ky., three shares; W. W. Belew, Johnson City, Tenn., three shares. H. G. Morrison, Johnson City, Tenn., three shares.

*March 12, 1909.* Cumberland Northern Railway Company filed Articles of Incorporation. Principal office or place of business of said

company to be located in the city of Manchester, Clay county, Ky., Company formed for the purpose of constructing, acquiring, operating, and maintaining a railroad or railroads from the city of Artemus, Kentucky, in Knox county, into and through the counties of Knox, Clay, Owsley and Lee, to Beattyville in Lee County, Kentucky. Amount of capital stock \$100,000 divided into 1,000 shares of \$100.00 each. Names and places of residence of the subscribers and each of its stockholders, and the number of shares subscribed by each, as follows: S. P. Condon, Knoxville, Tenn., thirty-five shares; B. C. Milner, Louisville, Ky. thirty-five shares; F. S. Mead, Knoxville, Tenn., thirty-five shares; E. L. Thomas, Knoxville, Tenn., thirty-five shares; J. H. Graham, Knoxville, Tenn., thirty-five shares; C. B. Lyttle, Manchester, Ky., seven shares; W. O. Gloster, Manchester, Ky., six shares

*April 13, 1909.* Cincinnati, Louisville, Lexington & Maysville Traction Company filed copy of its articles of incorporation. Principal place of business to be at Dry Ridge, Kentucky. Business to be carried on by this corporation is the organization, establishing, construction, equipping, operating, and maintaining a railway to be operated by electricity or any other motive power, together with all switches, turnouts, and side tracks, branches, cross-lines auxiliary lines, double tracks or terminals, from Cincinnati, which would mean at any point in or near Ludlow, or in or near Covington, or in or near Newport, or in or near Bellevue or Dayton, or at any point in Boone, Kenton and Campbell counties, to a point in or near the city of Lexington, which would mean the connection with other lines at Cynthiana, Paris, Winchester, Georgetown, Frankfort, Versailles or a terminus in or near the city of Lexington, supposing to pass through the counties of Boone, Kenton, Campbell, Gallatin, Grant, Pendleton, Bracken, Mason, Harrison, Bourbon, Fayette, Nicholas, Clark, Franklin, Scott and Owen and a railway from a point in or near the city of Louisville, which would mean from a point connecting with other lines in or near LaGrange, in or near Shelbyville, in or near Pewee Valley, in or near Anchorage, or in or near the Corporation of Louisville itself, or from any point in Jefferson, Shelby, Spencer, Oldham, Franklin or Henry counties; to the city of Maysville; which would mean at any point connected with other lines at Brooksville, Augusta, Mount Olivet, or the corporation of Maysville itself, or to

any point in Grant, Pendleton, Harrison, Bourbon, Nicholas, Robertson, Bracken or Mason counties; suposing to pass through Jefferson. Oldham, Shelby, Spencer, Anderson, Woodford, Franklin, Henry, Trimble, Carroll, Gallatin, Owen, Grant, Scott, Fayette, Bourbon, Harrison, Nicholas, Robertson, Pendleton, Boone, Kenton, Campbell, Bracken and Mason counties, supposed to be two hundred and fifty miles.

This corporation is also authorized to establish and equip, operate and maintain a telephone system along or near its line of railway and furnish telephone service to any person, corporation, town, villages, cities, counties, or districts upon such terms and conditions as may be agreed upon, and charge and receive compensation therefor. Capital stock, \$1,000,000, divided into ten thousand shares of one hundred (\$100.00) dollars each. Names, place of residence, and number of shares, held by each as follows: W. T. Blackburn, Dry Ridge, Ky., 1,010 shares; John McCoy, Dry Ridge, Ky., ten shares; Kate Martin, Dry Ridge, Ky., ten shares; Addie B. Atkins, Sherman, Ky., ten shares; John J. Blackburn, Hanks, Ky., ten shares; J. Dawes, Dry Ridge, Ky., ten shares; Pres Simpson, Dry Ridge, Ky., ten shares; Geo. McMillan, Butler, Ky., ten shares; S. M. Bittler, Williamstown, Ky., ten shares; J. Glascock, Williamstown, Ky., ten shares.

May 28, 1909. Miller's Creek Railroad Company filed its articles of incorporation, and affidavit as to subscription of stock. Principal place of business of said company at Ashland, Kentucky, in Boyd county. Purpose of organization to construct, acquire, own, operate and maintain a standard gauge railroad and branches thereof, to be operated by steam or other motive power, from a point on the Big Sandy Division of Chesapeake & Ohio Railway Co.'s line on the west side of the Levisa Fork of Big Sandy river, between the mouth of Limestone branch and Burnt Carbon branch, in Johnson county, Kentucky; thence crossing the Levisa fork of Big Sandy river to a point at or near the head thereof, and the head of its various forks and tributaries; a total distance of five miles, as near as can now be stated, wholly in Johnson county, Kentucky. Also to construct, maintain, repair and operate railway and highway traffic bridges over navigable streams by said railway, and to charge and collect toll for traffic passing over such bridges.

Capital stock of said corporation \$2,500.00 divided into twenty-five shares of one hundred dollars each.

Names and places of residence of each of the stockholders and the number of shares of stock subscribed by each as follows: John F. Hager, Ashland, Ky., three shares; J. W. M. Stewart, Ashland, Ky., three shares; S. S. Willis, Ashland, Ky., three shares; James G. Serey, Ashland, Ky., three shares; John M. Hopkins, Catlettsburg, Ky., three shares; John S. Hager, Ashland, Ky., one share; L. S. Wilson, Ashland, Ky., one share.

*June 16, 1909.* The Kentucky Electric Railway Company filed articles of incorporation, and affidavit as to subscription of capital stock. Principal place of business at Providence, Webster County, Ky. Purpose, that of constructing, owning, operating and maintaining a railroad for operating trains with both steam and electricity from Dawson Springs, in the county of Hopkins, to the city of Providence, in the county of Webster, in the State of Kentucky, running generally in a northern direction through the counties of Hopkins and Webster, and a distance of 20 miles.

Capital stock of said corporation ten thousand (\$10,000) dollars, divided into 200 shares at fifty (\$50.00) dollars each.

Names and places of residence of the different stockholders and the number of shares of the capital stock subscribed by each are as follows: B. H. Roney, Providence, Ky., 19 shares; Ben. Sisk, Silent Run, Ky., 20 shares; J. T. Edwards, Providence, Ky., 19 shares; S. Hicks, Providence, Ky., 20 shares; W. G. Roney, Providence, Ky., 20 shares; M. T. Edwards, Providence, Ky., one share; M. S. Roney, Providence, Ky., one share.

*August 2, 1909.* Miller's Creek Railroad Company filed amended articles of incorporation changing name of the corporation to "Paintsville and Rockcastle Railway Company." ;

*September 16, 1909.* The Cynthiana & Paris Railway Company filed articles of incorporation, and affidavit as to subscription of stock. Principal place of business at Cynthiana, Kentucky. Purpose to construct, maintain and operate by electricity or other motive power a railway and its necessary branches, with all necessary switches, turn-outs, and sidetracks, commencing at some point in or near the city of Cynthiana, in Harrison county, Kentucky, and extending through the counties of Harrison and Bourbon in a southerly direction to the city

of Paris, in Bourbon county, Kentucky, a distance of about twelve miles. Amount of capital stock \$5,000.

Names of stockholders, residence and number of shares held by each, as follows: R. W. Day, Scranton, Pa., 32 shares; Wade H. Lail, Cynthiana, Ky., three shares; R. H. Rees, Cynthiana, Ky., three shares; G. W. Lail, Cynthiana, Ky., three shares; C. E. Lail Cynthiana, Ky., three shares; F. L. Fuller, New York City, three shares; J. M. Dills, Cynthiana Ky., three shares.

*October 22, 1909.* Ohio, Kentucky & Atlantic Railroad Company filed "certificate of incorporation." Organized under the laws of Delaware. Office at Wilmington, Delaware. Purpose of organization, to survey, establish, build construct, locate, equip, maintain, operate, own, lease, rent, buy, sell and otherwise acquire use, hold and dispose of railroads, and other roads, including a railroad from a point on the Ohio River, in Greenup county, Ky., in a southerly direction, through the counties of Carter, Elliott, Lawrence, Morgan; also from a point in Harrison county, in a southeasterly direction, through the counties of Nicholas, Bath, Montgomery, Menifee, Wolfe, Magoffin, Breathitt, Floyd, Perry, Knott, on to a point in southeastern Kentucky, on the Virginia State line, and from thence to the Atlantic Coast, also navigation lines of boats for the carriage and transportation of passengers and freight and to engage in the business of railroading and transportation as a common carrier and otherwise, etc., etc.

Total authorized capital stock, fifty thousand (\$50,000) dollars, divided into five hundred shares (500) shares of the par value of one hundred dollars (\$100.00) each.

Names and places of residence of each of the original subscribers to the capital stock and the number of shares subscribed for each are as follows: J. F. Varcoe, 511 Carlton, Ave., Brooklyn, N. Y., 94 shares; Warren Akern, Wilmington, Del., three shares; William J. Maloney, Wilmington, Del., three shares.

*November 11, 1909.* K. & I. Bridge Company filed amended articles of incorporation. Purpose, to acquire, construct, operate and maintain a bridge and also a railroad and ferry, and to operate and maintain additional lines of railroad, and additional bridge and additional ferry.

*November 11, 1909.* Covington & Big Bone Railway filed articles of incorporation, and affidavit as to subscription of stock. Principal office and place of business, Covington, Kenton county, Kentucky. Purpose, the construction, maintenance and operation of an interurban electric railway, about twenty-two miles in length, with single or double track. Capital stock, \$150,000, divided into shares of \$100.00 each.

Names and places of residences of each of the stockholders of said corporation, and the number of shares of stock subscribed by each of same is as follows: M. J. Crouch, Boone county, Ky., six shares; J. J. Weaver, Ludlow, Ky., six shares; J. W. Kennedy, Boone county, Ky., six shares; Orlanda P. Smith, Covington, Ky., six shares; Robert S. Holmes, Covington, Ky., six shares; Louis Fritz, Covington, Ky., seven shares; William Riedlin, Covington, Ky., six shares; Joseph Feltman, Covington, Ky., six shares; A. W. Koch, Cincinnati, Ohio, six shares.

*December 9, 1909.* Wasioto & Black Mountain Railroad Company filed amended articles of incorporation, as follows:

First. The said Wasioto & Black Mountain Railroad Company shall have the right to extend its said line of railroad from its present authorized terminus on Tom's Creek, in Bell county, Kentucky, up the Cumberland river to or near the town of Harlan, in Harlan county, Kentucky, and from thence up Clover Fork of said Cumberland river to Morris Gap, or on the head of said Clover Fork, a distance of about fifty miles, and to construct a branch of said railroad from the said town of Harlan, or near thereto, up Poor Fork of Cumberland river to its head, a distance of about seventy miles, and to construct, maintain and operate said extension or extensions of said railroad, herein authorized, and such branches, spurs, switches and side tracks connecting therewith and leading therefrom as may be convenient or necessary, and to construct or cause to be constructed, maintained and operated such telegraph lines as may be necessary. The said extension or extensions, hereby authorized, extend through portions of the counties of Bell, Harlan and Letcher, in the State of Kentucky.

Second: The amount of capital stock of said corporation is one million dollars (\$1,000,000), divided into shares of one hundred dollars (\$100) each.

Third: The highest amount of indebtedness or liability which the said corporation may at any time incur shall be three million dollars (\$3,000,000), with power to secure any authorized indebtedness by mortgage or deed of trust upon the railroad and other property and franchise of the said corporation.





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**Important Letters, Circulars and Publica-  
tions in Connection with the Work  
of the Commission, 1909**

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**IMPORTANT LETTERS, CIRCULARS AND PUBLICATIONS  
IN CONNECTION WITH THE WORK OF  
COMMISSION, 1909**

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Cincinnati, O., Feb. 4, 1909.

MR. A. T. SILER,  
*Chairman Kentucky Railroad Commission,*  
Williamsburg, Ky.

DEAR SIR:

Replying to your letter of the 3rd instant, in regard to agency at Silerville, Ky. Your letter is the first I have heard of any attempt to close that station, which will not be considered unless the earnings decrease so that it will not pay to keep it open.

Yours truly,

(Signed)

H. BAKER.

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Cincinnati, O., Feb. 5, 1909.

HON. A. T. SILER,  
Williamsburg, Ky.

DEAR SIR:

Referring to letter from our Silerville office to you, under date of the 1st inst., with reference to the Railroad Company cutting out their agent at that place.

As I understand we have a very good agent and it would be very inconvenient to have this office discontinued. I trust that you will use your efforts with the Railroad Company to continue this agency.

Yours truly,

(Signed)

W. E. DELANEY.

Latonia, Ky., Feb. 4, 1909.

A. T. SILER, ESQ.,

DEAR SIR:

I ask for information relative to law on the subject as regards a junction point, whether one railway company crossing another not controlled by it, or for instance, the L. & N. Ry. crossing its own tributary line, viz.: T. C. C. Ry. at Latonia, Ky. What is the law on the subject? Can I under the law compel them to stop for me? (Having a monthly ticket from Cincinnati to Rosedale, Ky.) Your early reply will favor.

Yours truly,

(Signed)

GEO. J. NORTH, *Supt.*

Williamsburg, Ky., Feb. 13, 1909.

MR. GEO. J. NORTH,

Latonia, Ky.

DEAR SIR:

Answering your letter of recent date, I refer you to Section 775 of the Kentucky Statutes, which is as follows:

"That whenever railroads cross each other in this State, the trains shall be brought to a full stop at least fifty feet before getting to the crossing: provided, however, that the provision of this act shall not be applicable where the crossings of such roads are regulated by derailing switches, or other safety appliances, which prevent collisions at crossings, nor where a flagman or watchman is stationed at such crossings and signals that the trains may cross in safety."

Under this section you will notice that they do not have to stop at crossings if the railroad is regulated by derailing switches, or other safety appliances which prevent collisions at crossings, or where flagmen or switchmen are stationed at such crossings for the purpose of preventing collisions or other troubles. The fact that you have purchased passage will not give you authority to stop trains at crossings or any other point where there is no established stop or station.

Hoping this may be quite satisfactory to you, I am,

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Yours truly,

(Signed)

A. T. SILER, *Chairman.*

Cincinnati, O., April 5, 1909.  
Rate 49-H.

MR. ROY WILHOIT, Rate Clerk,  
*Kentucky Railroad Commission,*  
Frankfort, Ky.

DEAR SIR:

Rate on coal from Paintsville, Ky., to Wilmore, Kentucky.

Replying to your favor March 30, with reference to publication of through rate of \$1.70 per ton on coal, carload, from Paintsville, Ky., to Wilmore, Ky:

We take pleasure in now advising you that the rate in question has been published by the Chesapeake & Ohio Railway Company in their Freight Tariff No. 13413 and became effective March 28, 1909. We have so advised Mr. R. A. Dodd, of Wilmore, Ky.

(Signed)

Yours truly, G. P. BILES, F. T. M.

MR. A. T. SILER, Cincinnati, O., July 23, 1909.  
*Chairman Kentucky Railroad Commission,*  
Frankfort, Ky.

DEAR SIR:

I enclose copy of circular regarding a plan for the immediate settlement, by a company organized for the purpose, of all legitimate freight claims presented by shippers and consignees, who may become clients of the system.

The plan is favored by a large number of shippers and railroad officials to whom we have disclosed the idea, and we have succeeded in interesting several financiers who are willing to furnish the necessary capital, when we can convince them that the proposition would be taken advantage of by shippers. We are now engaged in making a canvas of the city to secure the required number of prospective clients. In this work we are meeting with success and trust to be able to have the scheme under way, with a company organized and ready for business, within the near future.

The idea occurred to us that it might be well to present the plan to you and ask your opinion in regard to it, and to solicit any suggestions which you may be willing to offer.

Anything which you may care to write us on the subject, will be read with interest, and appreciated.

Very truly yours, EUSTACE A. WATERS.

THE DISASTROUS DELAYS IN SETTLEMENT OF  
FREIGHT CLAIMS ELIMINATED.

OR

THE FREIGHT CLAIM, FROM THE CLAIMANT'S STANDPOINT,  
A THING OF THE PAST.

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*To the Shippers of Cincinnati and vicinity:*

A factor which has contributed largely to popular prejudice against railway corporations and has been the cause of much recent anti-railroad legislation, is the delay which shippers and consignees experience in settlement of claims against the carriers for loss, damage and overcharge to freight shipments.

Any business man who has had occasion to make a claim against a carrier on one of his shipments knows that the dilatory manner in which claims are handled by the railways is a source of great annoyance, inconvenience and expense in loss of interest on the amount involved; extra cost of bookkeeping; frequent loss of customers, etc.; but the idea that a method for the avoidance of these expenses and disadvantages might be devised does not seem, until now, to have occurred to any one.

Having carefully studied the subject, we have concluded to place before the shipping public a proposition which may be briefly stated as a system of guaranty against loss, damage or overcharge as well as an arrangement for the immediate adjustment of claims for refund of switching and drayage charges, elevation, grain door and other terminal expenses. In other words, any shipper can, upon becoming a client of our system, be entirely and forever relieved of the many annoyances attending the collection of freight claims, our contract binding us to immediately pay to the claimant upon presentation of claim supported by necessary papers, the invoice value of the shortage, or the cost of repairs if the shipment is damaged. On claims of

overcharge, switching, or drayage charges or other terminal expenses, to pay at once upon receipt of proper evidence and supporting documents, the difference between the amount collected and the amount which should have been charged in conformity with the rates, rules and regulations published and filed with the Interstate Commerce Commission or the Railroad Commission of the several States, as the case may be.

To the progressive business man the advantages of such a system cannot fail to be apparent, and to the carriers any method which would take from them the ill-will frequently engendered by unavoidable delays in settling with the claimant, the merits of this system will be self-evident.

It should be borne in mind that it is not the intention of the promoters to be in any manner antagonistic to the carriers, but on the other hand, to cooperate with them to the fullest extent, their object being the mutual satisfaction of all of the parties concerned.

The cost of this guarantee is a matter which has been carefully considered by the originators who have reached the conclusion that the premium for such a guarantee must necessarily be computed on a basis which would take into consideration many features of the business involved: As, for instance, the likelihood of claims arising on certain commodities which from their nature and peculiar manner of shipment are more likely than others, to go astray, be pilfered, or damaged; the volume of business handled by any concern which might become a client of the system; the nature of the claim, such as the difference between one for loss or damage, and one for overcharge, switching and drayage, or other terminal expenses would also have to be considered. In view of these important factors, we have concluded to leave the matter of the cost and other details of the service, to be explained by our representative, who will in the near future, call upon those to whom this circular is addressed.

The originators have for a number of years been in the service of several of the most important railway companies as investigators and adjusters of freight claims, and are confident that their system will meet with the hearty approval of railway Freight Claim Agents, as well as the shipping public.

In conclusion, we wish to state that arrangements for the formation of a company for the purpose of according this service, are now being perfected and the object of this circular is to afford



the matter the fullest possible measure of publicity, prior to the beginning of active operations, and to solicit your support *and patronage*.

Any further information will be cheerfully and promptly furnished on request.

(Signed)

EUSTACE A. WATERS,

THOMAS WATERS,

Telephone North 4682-X.

1361 Chapel Street,

Cincinnati, Ohio

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Williamsburg, Ky., July 26, 1909.

HON. E. A. WATERS,

1361 Chapel Street,

Cincinnati, Ohio.

DEAR SIR:

I am in receipt of your letter of recent date, and also your printed circular in which you discuss the subject of organizing a company to handle settlement of freight claims against the railroad companies. In my judgment no subject has gone farther to prejudice the public mind against railroad corporations than the many inexcusable delays which have existed in the past in the settlement of freight claims. I agree with you that this subject has caused much recent anti-railroad legislation. Claims that are just and honest and that should be honored have been delayed months and even years before settlement. I will heartily support any plan which you or any other man or corporation may get up to facilitate this line of business. The people who have freight claims against the railroad companies for settlement, if they are just, should have them honored promptly, and there is no excuse for the long delays which often accompanies settlements of this kind. Should your representative come to Williamsburg or Frankfort I shall be glad to talk this subject over with him.

Yours truly,

(Signed)

A. T. SILER, *Chairman.*

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Louisville, Ky., Sept. 16, 1909.

HON. A. T. SILER,

*Chairman State Railroad Commission,*

Frankfort, Ky.

DEAR SIR:

Please let me know what control, if any, the Kentucky State

Railroad Commission has over the express companies on State business.

Have you the power to change a State rate, and is the Commission able, under the law, to enforce any instructions it might give the express companies in relation to their method of doing business?

In other words, are the express companies subject to the Commission as are the railway companies?

This Board of Trade is urged to inquire into this matter and it may be that some State legislation will be required in Kentucky in order to put the express companies under the control of the Commission on State business.

An early reply will oblige,

Yours very sincerely,

(Signed)

JOHN J. TELFORD,  
*Secretary.*

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Williamsburg, Ky., Sept. 21, 1909.

HON. JOHN J. TELFORD, Secy.,  
Louisville, Ky.

DEAR SIR:

Answering your letter of September 16th, will say the Kentucky State Railroad Commission has no power over express companies in Kentucky. The Commission can give instructions and advise with the express companies, but it has no power to enforce orders which it might make in connection with such express companies. In my judgment the attention of the Kentucky Legislature should be called to express companies, telephone companies and telegraph companies with a view to placing the companies under the control of the State Railroad Commission. A large step in this line would be of great advantage to Kentucky and would be in keeping with the progress which has been made along this line in other States.

Yours truly,

(Signed)

A. T. SILER, *Chairman.*

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Williamsburg, Oct. 1, 1909.

JOHN J. TELFORD, SECY.,  
Louisville, Ky.

DEAR MR. TELFORD:

I am unable to give you the States that have the best laws govern-

ing express companies. I think you can get a copy of the law governing express companies in the various States by writing the Secretary of the Interstate Commerce Commission. Should he fail to furnish you the law desired, I suggest that you write a letter to the Railroad Commission of each State requesting this law, which they will be glad, I am sure, to furnish you. A letter addressed to the Railroad Commission at the Capital of the State will in every case be properly delivered.

Yours truly,  
(Signed) \_\_\_\_\_ A. T. SILER, *Chairman.*

Cumberland, Ky., October 6, 1909.

HON. A. T. SILER, *Chairman,*  
*State Railroad Commission,*  
Williamsburg, Ky.

MY DEAR MR. SILER:

We are in continual controversy with the shippers on our line as to the payment of car service. The Louisville & Nashville Railroad Company charges our line car service after the expiration of 48 hours on all coal cars, whether loaded or empty. The mines are relying on Clause A of Rule 3 of the Car Service Rules and some of them have letters from you stating that they do not have to pay car service on empty cars.

Ours is a peculiar position. We own no equipment and are dependent on the Louisville & Nashville Railroad for cars. Our revenue on coal is only ten cents per ton. This does not permit our paying car service unless we can get it back from the shippers.

With this understanding of our position, I would be very glad to have a ruling from you in regard to handling these matters. We understand, of course, that shippers on the main line of the L. & N. R. R. do not have to pay car service on empty cars, but inasmuch as we are not members of the Car Service Association, and are not eligible to membership, it seems to me that we should not be held up for this car service.

Thanking you for an early reply, I am,

Yours truly,  
(Signed) \_\_\_\_\_ B. C. MILNER,  
*General Manager and Chief Engineer.*

Williamsburg, Ky., Oct. 9, 1909.

MR. B. C. MILNER,  
*Gen. Mgr. and Chief Engineer,*  
Cumberland, Ky.

DEAR SIR:

I have your letter of October 6, 1909, and in response to same will say that the same rules which apply to coal mines apply to you where you procure the cars for use at coal mines. In other words, Clause A of Rule 3 of the Car Service Rules applies to any one who procures cars for loading at mines. This Rule will be found in the 25th annual report of the Kentucky Railroad Commission, which is for the year 1905, and on page 122, and which is marked in that report Rule 2, and this language is used at the end of the Rule: "And that cars to be loaded at coal mines are not to be treated as placed until actual loading of the cars shall have commenced." You will notice by reading from the Car Service and Storage Rules under which you are working, under Rule 3, clause A, almost the same language is used, which is as follows: "and if cars are for loading at coal mines, such length of time after actual loading of cars shall have commenced." This rule means that when you procure cars for loading at mines that the demurrage shall not be charged until after the expiration of 48 hours from the time loading of car will have actually begun. In other words, you are protected by this Rule just as the coal operator is protected by it.

Yours truly,

(Signed) A. T. SILER, *Chairman.*

Cumberland, Ky., October 13, 1909.

HON. A. T. SILER, *Chairman,*  
*State Railroad Commission,*  
Williamsburg, Ky.

DEAR SIR:

I thank you for your letter of October 9th setting forth the Commission's ruling in regard to car service to be paid by The Cumberland Railroad Company. The Louisville & Nashville Railroad has been charging us on cars that were held over forty-eight hours, whether loaded or empty. The mines, of course, refused to pay us for the cars until actual loading is commenced. We have been compelled to pay

several hundred dollars in car service for which the mines decline to re-imburse us.

Your letter is certainly plain and explicit and in future, we will be governed accordingly. Please except our sincere thanks.

Yours truly,  
(Signed) B. C. MILNER,  
*General Manager and Chief Engineer.*

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Nashville, Tenn., November 23, 1909.

SPOKES—HAZEL, KY., TO PADUCAH, KY.

HON. KENTUCKY RAILROAD COMMISSION,  
Frankfort, Kentucky,

GENTLEMEN:

Three expense bills and copies of way-bills for the following shipments of club turned spokes, Hazel, Ky., to Paducah, Ky., are respectfully submitted, viz.:

Hazel, Ky., Way-bill L-32 August 14, 1909, N., C. & St. L. car 9234.

Hazel, Ky., Way-bill L-22, October 20, 1909, L. & N. car 93516.

Hazel, Ky., Way-bill L-19, November 12, 1909, N. C. & St. L. car 5514.

These shipments, it will be observed, were billed and freight collected at 15 cents per hundred pounds, the regular tariff rate. The shippers failed to take up with us the question of freight rates in advance of the movement, but did so later when we found it equitable to make the rate ten cents, said rate being published in our Rate Issue 34973, copy inclosed. We desire your permission to adjust the freight charges on the three cars already forwarded at the rate of ten cents and respectfully ask authority to do so.

Yours truly,  
C. BARHAM,  
*General Freight Agent.*  
(Signed)

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December 6, 1909.

MR. CHAS. BARHAM, Gen'l. Freight Agent,  
N., C. & St. L. R'y. Co.,  
Nashville, Tenn.

DEAR SIR:

Your letter November 23d—19C—Spokes, Hazel, Ky., to Paducah, Kentucky.

The Commission authorizes me to advise you that it will be satisfactory for you to adjust freight rate on three cars of spokes referred to, at the rate of ten (10c) cents per hundred pounds.

Yours truly,

(Signed)

ROY WILHOIT,  
*Rate Clerk.*



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# ACCIDENTS TO PERSONS

## 1909

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## ACCIDENTS TO PERSONS, 1909.

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### CHESAPEAKE & OHIO RAILWAY COMPANY.

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*January 4, 1909, about one mile east of Maysville, Ky., 8:05 p. m.,* Oral Vantine (white), trespasser, 17 years of age, is supposed to have fallen off of eastbound freight train 526 and was instantly killed.

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*February 2, 1909, one-half mile west of Ewington, Ky., 9:58 p. m.,* John Burton, trespasser, occupation lumberman, who resides at West Liberty, Ky., white, age 45, stepped in front of train 24, an east-bound passenger train which was running at a speed of 40 miles per hour and was fatally injured.

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*February 13, 1909, Grahn, Ky., 12:27 p. m.* J. D. Dickinson, farm laborer, age 21, white, single, intoxicated, while attempting to board westbound freight train No. 99, running at a speed of fifteen miles per hour, fell under train, was run over, body cut in two and instantly killed.

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*February 23, 1909, White House, Ky., 6:32 p. m.* F. W. Blevins, conductor of train No. 38, an east bound passenger train, white, age 40, married, while assisting passengers off of train at White House, was struck in back of head by a passenger, Alf. Pruitt, holding a ticket reading Catlettsburg, Ky., to White House, Ky., white, intoxicated, age 45, married, and knocked down.

As Blevins arose unknown party shot him in the back, ball penetrating stomach. Blevins died at 12:55 a. m., February 25th at Kings Daughters Hospital, Ashland, Ky.

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*April 9, 1909, 1-2 mile west of Ashland Junction, 11:17 a. m.* Josh Pennington, trespasser, occupation unknown, who resided at E. K. Junction, Ky., white, age 25, married, while stealing a ride on

west bound freight train No. 99, fell between the cars, body cut in two and instantly killed.

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5:15 a. m., *April 10th, Covington, Ky.* yard engine 250 struck and instantly killed B. Groger, trespasser (white), about 30 years of age.

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*April 21, 1909, Highland, Ky., 12:08 p. m.* James S. Jarvis, trespasser, occupation photographer, who lived three miles east of Olive Hill Ky., on Jarvis Branch, married, one child, was struck while walking on track by west bound passenger train No. 25 and instantly killed. Remains were turned over to county coroner and his relatives notified.

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*April 25, 1909, Ashland, Ky., about 1:30 a. m.* Andy Caldwell, a section laborer in the employ of the A C. & I. Railway Company, age 35, white, married, three children, a resident of Ashland, Ky., was found on tracks of the C. & O. on Front Avenue and 7th street about 6:00 a. m., with head and one arm severed from body.

There is every evidence that the man was murdered and body placed on tracks. Body was run over by No. 24's back up, which was being handled from Ashland passenger station to Big Sandy shops in charge of hostler and hostler helper. Blood spots on this equipment show that this was evidently the train that ran over the body, although hostler and hostler helper know nothing in regard to the accident. Post mortem examination reveals three stab wounds on body, one in the neck and two in the breast, plainly indicating murder.

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*April 20, 1900, Kilgore, Ky., 7:40 p. m.* Unknown white man, age about 65 years, stepped in front of east bound local freight train No. 68, eleven cars, speed twenty-five miles per hour, was struck and instantly killed.

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*Augusta, Ky., 10:15 a. m., May 2, 1909.* John Kebler, trespasser (white), 18 years of age, attempted to get on eastbound freight train extra 451, while running at a speed of ten miles per hour, and fell under train, having both legs cut off. He died from injuries at 3:30 p. m. same date.

*Morning of May 10th, one mile east of South Portsmouth, Ky., remains of Darb Smith (white), trespasser, about 28 years of age, were found along our track and is supposed to have been struck by some train.*

---

*6:00 a. m., May 29th, 1909, remains of Ed. Starrett (White), were found by track walker Kidder between main line and passing siding at Broshears, Ky., with top of head crushed in. No particulars as to how he met his death.*

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*Covington, Ky., Scott Street Bridge, 1:25 a. m., June 22nd, Henry Vanhooose (white), age 24 years, was riding on westbound freight train 1st 71 and was evidently struck by bridge, killing him instantly.*

---

*South Portsmouth, Ky., about 2:00 a. m., July 26th, Wm. Culbertson, night ticket clerk, age 30 years, was found on depot platform with serious contusion on head. He was removed to Hempstead Hospital in Portsmouth, Ohio, where he died at 1:20 P. M. No particulars as to how he met with his death.*

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*About one mile east of Dayton, Ky., 9:55 a. m., July 25th, 1909, John M. Gast (white), trespasser, age 40 years, was struck and instantly killed by westbound passenger train 2nd No. 1.*

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*August 23rd, 1909, Prestonsburg, Ky., 1:58 p. m., Ira Frazier, trespasser, occupation laborer, age 48, white, married, stepped in front of engine train No. 39, a westbound passenger train, three cars, all air and working, on curve, level grade, speed twenty miles per hour, was struck and fatally injured. Remains were turned over to his relatives.*

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*Russell, Ky., 4:15 p. m., August 27th, 1909, A. J. Henthorn, switchman, age 25 years, was caught between two cars and badly mashed. He only lived about five minutes after accident occurred.*

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*Dayton, Ky., 6:20 a. m., September 8th, 1909, W. L. Teel, brakeman, age 38 years, fell off of car of eastbound freight train extra No. 528 and was instantly killed.*

*One-fourth mile west of Newport Water Works, Ky., 3:15 p. m., September 8th, 1909, eastbound passenger train No. 16, struck and instantly killed M. L. Humphrey (white), trespasser, age 55 years.*

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*September 18th, 1909, Brighton, Ky., time unknown, Frank Cavanaugh, occupation street laborer, colored, age 30, single, a resident of Richmond, Ky., was struck and run over by some train and fatally injured.*

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*Russell, Ky., 3:15 p. m., September 21st, Grover Jordan (white), trespasser, age 17 years, while attempting to get on westbound freight train No. 71, fell under car and had both legs cut off. He died from injuries at 7:30 p. m., same date.*

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*About one-half mile east of Russell, Ky., 5:14 a. m., October 9th, westbound passenger train 1st No. 1 struck R. M. Bowman, switchman, age 23 years, fatally injuring him. He was taken to C. & O. hospital at Huntington, W. Va., where he died at 12 noon, October 10th.*

---

*Maysville, Ky., 9:00 p. m., November 2nd, 1909, John Freye (white), age 30 years, residence Manchester, Ky., was found dead under viaduct at foot of Market Street. His neck was broken and he is supposed to have fallen from trestle.*

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## CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RY. CO.

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*At 9:30 a. m., January 19th, at Georgetown Station, Con Reagan, switchman, while attempting to cross in front of cars, fell and was run over, being instantly killed.*

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*J. E. Spencer, machinist, Ferguson Shops, near Somerset had his skull fractured while repairing locomotive engine on March 16, 1909, and died while on way to hospital.*

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*Claude Clark, trespasser, was struck and instantly killed April 23, 1909, at mile 161, near Somerset, Ky.*

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Thomas Hicks, while trying to catch a freight train near Whitley, Ky., fell under the wheels and was killed May 4th.

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W. T. Tongate, while attempting to cross tracks near Crittenden, Ky., was struck and instantly killed by No. 1 at 9:12 a. m., July 29th.

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The remains of an unknown man were found under train No. 76 near Mason, Ky., at 4 p. m., September 23rd.

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W. J. Lee was killed by train at Pine Knot at 9:35 a. m., October 8th.

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A trespasser, supposed to be J. W. Lucas, was found at 3:05 a. m., October 13th, in Danville yard so badly injured that he died before reaching hospital.

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R. Leach, engineer, was killed in a collision at South Fork, Ky., at 6:30 a. m., October 31st.

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Ben Smith, colored, found dead on top of C. N. O. & T. P. car in Lexington Yards morning November 17, 1909.

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#### ILLINOIS CENTRAL R. R. CO.

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Norman Garrett, negro, trespasser, either fell or jumped from a moving freight train in the yards at Princeton, January 5th, sustaining injuries which caused his death on the 8th inst.

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7:45 a. m., February 9th, H. B. Gilmore, age 40, was struck by train near Main street, Louisville, Ky., sustaining injuries which caused his death at 1:00 p. m., same date.

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On the morning of the 20th of March, body of Wes Herron, colored, was found in the back water between Barlow and La Center. Deceased was not an employee. It is presumed that he accidentally drowned.

Weight Knight, colored preacher, struck and killed by train No. 72, Wickliffe, Ky., April 14, 1909. Understood deceased attempted to cross the track immediately in front of the engine, about 100 feet north of the passenger platform, at a place which is thought not to be at a public crossing.

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Taylor Hunt, non-employee, killed April 19th, Tipple Crossing, near Paducah.

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Body of a white man was found by bridge watchman, April 18th, at the north end of tunnel, Muldraugh, Kentucky. The body was badly mangled and cut to pieces.

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Sam Chappel, struck and killed by train No. 103, near Paducah, Kentucky, April 21, 1909. Deceased and one other had built a fire about two feet from end of ties and had gone to sleep, deceased being struck and killed by **passing train**.

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Noah Drake was found in an unconscious condition beside the track just south of Vine Grove on the 9th of June, and later died from his injuries.

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Steve Harper, colored trespasser, was found in Camp Creek Bottom, near Boaz, at 12:15 p. m., June 12th, suffering from injuries which caused his death at 3:00 p. m., June 13, 1909.

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Gus Fields was found in an unconscious condition near Stithton on the morning of the 13th of June; died at 8:10 a. m.

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Body of an unknown negro was found beside the track between Stiles and Epperson on the morning of the 14th of June, apparently having been struck or run over by a train.

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H. H. Worley, car repairer, was struck and instantly killed by yard engine at Paducah, in the afternoon of the 16th of June, 1909.

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Frank Goff, non-employee, was found in an unconscious condition near the track one-half mile north of Horse Branch, Ky., early on the morning of May 15th and died from his injuries on the 17th inst.

Young white man was found in an unconscious condition near Caneyville morning of the 23rd of June. He succumbed to his injuries the same day. It is not known in what manner he came to be injured.

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James Morris, white, while shooting craps with three companions in a railway car on turn table tracks at Hopkinsville, July 12th, was shot and killed by R. B. Morgan, colored, on account of being refused admittance to the game.

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Herman Decker, trespasser, injured at Central City July 27, 1909, struck by engine.

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July 24th, E. P. Wade, colored freight brakeman, while setting out cars at Henshaw, was run over and instantly killed.

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6:45 a. m., June 30th, 1909, Bennett Moss, while driving over tracks at Woodville Crossing, north of Heath, in a vehicle, was struck by northbound freight train, sustaining injuries which resulted in his death a few hours after reaching hospital.

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In rear end collision between two freight trains at north switch, Little Cypress, Ky., Brakeman P. Bernard was killed.

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Joe Cross, colored, was found on right of way near Rockport, morning of August 24th with left foot cut off, died in the hospital August 26th.

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2:40 p. m., October 27th, extra northbound freight train struck and killed an old white man by the name of W. B. Johns, near Clinton, Ky.

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11 o'clock a. m., on the 27th of October, Section Foreman Frank Murphy was run over and instantly killed by cars of freight train at Waverly, Ky., while attempting to cross the track.

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10:30 a. m., November 30th, John H. Chadwick, white, trespasser, age 16, while attempting to board moving northbound freight train



at Fulton, Ky., sustaining amputation of left arm and left leg, causing his death at 4:00 p. m. same date.

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### LOUISVILLE & NASHVILLE R. R. CO.

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On the morning of the 10th of January the body of an unknown colored man was found on track near Talbot, Ky., on Kentucky Division. It is supposed that he was run over by some train while lying on the track in an intoxicated condition.

---

January 14, 1909, fireman E. L. Lafferty was fatally injured by falling from engine of passenger train in tunnel near Shearer, Ky., on Kentucky Division. It is not known what caused him to fall from engine.

---

On the evening of the 14th of January Charles Tribble, a colored boy, was found on track at Berea, Ky., on Kentucky Division with both legs cut off and other injuries which resulted in his death some hours later. It is supposed that he was run over while jumping on or off freight train.

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On the 15th of January James Allen, trespasser, was struck by freight train and killed at Kufa, Ky., on Kentucky Division.

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On the morning of the 21st of January Mrs. Rosella Roeller, an old woman, trespasser, was struck and fatally injured by cars which were being switched while she was picking up coal on main track in yard at Wilders, Ky., on Cincinnati Division.

---

February the 5th Frank Williamson, an aged white man, was run over and killed in yard at Lexington, Ky., on Lexington Branch. Apparently this man was under or around coal car picking up coal, and was run over when car was coupled to by engine.

---

February 20th the body of a man, supposed to be Walter Parrott, was found at the side of track at Lofty, Ky., on Lebanon Branch.

It is supposed that he was struck by passenger train No. 21 the 19th of February while he was trespassing on the track.

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On the evening of the 13th March H. F. Warf, trespasser, was struck and fatally injured by passenger train at Tadcaster, Ky., on Middlesboro R. R.

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On the 22nd of March Henry Slaughter, colored, trespasser, was run over and killed by switch engine at Hopkinsville on Henderson Division.

---

April 12th at G Street crossing, Louisville, on Main Stem, First Division, James Holt attempted to drive across the track when the conveyance was struck by engine of a freight train, and he was fatally injured.

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On the afternoon of the 10th of April Preston Tankersly, a youthful trespasser, was thrown under car wheels while attempting to board a freight train near Livingston, Ky., on the Kentucky Division, and fatally injured.

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On the 16th of April Mike O'Mera, trespasser, was run over and fatally injured by cars which were being switched at Covington, Ky., on Kentucky Division.

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On the 18th of April a youth named John Lewis was fatally injured while attempting to jump on freight train at Brush Creek, Ky., on Kentucky Division.

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On the 19th of April passenger train No. 7 struck a horse and buggy on crossing near Eagle, Ky., on Cincinnati Division, killing an old lady named ——— Tandy, who was in the buggy.

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April 21st Robert Bryant, trespasser, was fatally injured by being struck by train while walking on track between Kenney and Hutchison on Kentucky Division.

---

On the 21st of April Miss Mattie Conway was run over and killed

by passenger train No. 16 between Benson and West Frankfort, Ky., on Lexington Branch.

---

About two o'clock on the morning of the 22nd of April the body of a youth named Frank Kincaid was found between rail and curb of passenger station at Horse Cave, Ky., on Main Stem, First Division. A jug of whiskey was found with the remains, and it is supposed that he was drinking, sat down on curbing at station, and went to sleep, and was struck by a freight train.

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On the evening of the 25th April E. E. Campbell, a trespasser, was struck and killed by Southern Ry. passenger train No. 102, which was switching on L. & N. tracks at Middlesboro, Ky., on Cumberland Valley Division.

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On the 6th of May Clayton Ford, an elderly man of Athertonville, Ky., was run over and fatally injured by a freight train while lying on track between New Haven and Athertonville, Ky., on Lebanon Branch.

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On the 23rd of May Will Leach (colored), trespasser, was run over by freight train while lying on the track near Tadcaster, Ky., on Middlesboro R. R.

---

May 24th C. W. Williams, a special agent of L. & N. R. R. Co. was struck and killed by passenger train at South Louisville on our Main Stem, First Division. Mr. Williams was in the yard in connection with the loading of race horses, and stepped out from behind a car, on to main track, immediately in front of passenger train.

---

On the morning of the 7th of June the remains of Jesse D. Dickey, trespasser, were found on track in yard at Paris, Ky., on Kentucky Division. It is supposed that he was asleep or drunk on track, and was run over by passenger train No. 31.

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Joe Neal (colored), killed at Eminence, Ky., on Lexington Branch. Another negro boy, named Howard Compton, was seriously injured at the same time and in the same way, and he died June 11th, having never recovered from operation which it was necessary to perform.

On the morning of the 12th of June J. H. Green, an inmate of the Confederate Home at Pewee Valley, was struck and killed by passenger train on crossing north of Pewee Valley, Ky., on Cincinnati Division.

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On the evening of the 15th of June passenger train No. 33 struck and killed Mrs. Anderson Miller, an old woman, who was picking up coal on track about half a mile north of Pittsburgh, Ky., on Kentucky Division.

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On the morning of the 27th of June J. B. Martin, trespasser, was struck and instantly killed by freight train while he was picking up coal on track near Dortha, Ky., on Kentucky Division.

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On the night of the 26th of June the remains of Sherman Madra, a colored boy about 19 years old, were found on our track at Sonora, Ky., on Main Stem, First Division. He had evidently been struck or run over by some train while trespassing on track.

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On the night of the 3rd of July Arthur Wade, trespasser, was struck and instantly killed by passenger train while walking on track, supposedly in an intoxicated condition, at Earlington, Ky., on Henderson Division.

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On the morning of the 25th of July the body of Arthur Guinn was found on sidetrack at Snider, Ky., on Kentucky Division. He is supposed to have been struck by some train while sitting on main track during the night.

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On the 26th of July the remains of Nat Kinney (colored), were found on track near Memphis Junction, Ky., on Main Stem, Second Division. It is supposed that he was a passenger on an excursion train, but the circumstances connected with his death are not yet known.

---

July 29th John Thays was struck and instantly killed by passenger train at Union Station, Lexington, Ky., on Kentucky Division. He stepped on track immediately in front of engine.

August 1st passenger train No. 4 struck and instantly killed a girl, Miss Helen Steadman, on private crossing near Buckners, Ky., on Cincinnati Division.

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Thomas Anderson, train baggagemaster, was killed in a derailment of passenger train No. 23 at noon August 25th at Perth, Ky., on our Kentucky Division.

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On the morning of the 14th of August Jake Whitsell, alleged to be partially deaf, was struck by a train while trespassing on track near Slaughters, Ky., on Henderson Division, and fatally injured.

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A yard engine August 24th ran over and killed a trespasser who was asleep on track between Campbell and Wenzel streets, Louisville, on Railway Transfer.

It is claimed that the man's name was Jim Shannon; but the remains were not positively identified.

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August 26th in yard at Corbin, Ky., on Cumberland Valley Division, B. B. Alexander, a fireman, while off duty, was riding a cut of cars for his own convenience, when he fell between two of the cars, and was run over and fatally injured.

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On the night of the 23rd of September the remains of a man, afterwards identified as Lewis Richardson, were found on track near Upton, Ky., on Main Stem, First Division. It is supposed that he was run over while attempting to board a freight train while in an intoxicated condition.

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On the 2nd of October Almer McCauley, colored, ashman, was run over and killed at Bowling Green, Ky., on Main Stem, Second Division. He was in ash pit under engine, and it was understood that he would remain there until engine had been removed clear of the pit, but he attempted to climb out of the pit, and was caught under the engine wheels.

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On the morning of the 17th of October the remains of an unknown colored man were found on track near Casky, Ky., on Hen-

derson Division. It is supposed that he had been run over by some train during the night.

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On the morning of the 17th of October the remains of Miss Leunna Meadows were found at side of track near Ford, Ky., on Kentucky Division. It is supposed that this woman, who was deaf and dumb, was struck and killed by freight train while crossing track at a point where there is no public crossing.

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On the 17th inst. Anthony Flanagan was killed at Bank Lick, Ky., on Cincinnati Division. Presumably this youth was under or close to freight car which was standing on siding, and when this car was moved by a train, he was run over.

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On the 2d inst. Brack Mundy, colored, trespasser, was struck and fatally injured by freight train near Delmar, Ky., on Kentucky Division.

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On the night of the 4th inst. Bud Taylor, colored, was run over and fatally injured by switch engine at Louisville, Ky., on L. H. C. & W. Railroad. It appears that this man was in saloon near track, and ran out to see whether his team of horses was standing. He ran directly in front of engine, almost knocking off the switchmen on the front foot-board.

---

On the morning of the 25th of December, the body of Ben Murray was found on track in the coal yard of the Scanlon Coal Company, at Louisville, Ky., on Main Stem, First Division. This yard is private property, and is inclosed; but there is a track into it, on which cars are placed by L. & N. R. R. Company. The body had evidently been run over by cars which were switched in that track during the night; but the entire absence of blood on the rails or ties seems to prove conclusively that the man was dead for some time before his body was run over by the cars.

SOUTHERN RAILWAY IN KENTUCKY.

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At 6:15 a. m., February 12, 1909, A. Mory, white, age 45, residence 1823 Osage street, Louisville, Ky., was struck and killed by a freight car being handled by K. & I. B. R. R. Co.'s engine 3 while switching at 12th and Magnolia streets, Louisville, Ky.

---

At 8:40 a. m., July 26, 1909, Martin English, a trespasser, age about 65 years, was struck by Southern Railway passenger train in Louisville, Ky., and injured to such an extent that he died July 27th.

---

At. 8:10 a. m., September 6, 1909, Henry McReynolds, colored, was struck by Southern Railway engine causing injuries which resulted in his death about one hour later. The accident occurred on right of way east of 26th street, near the canal, in Louisville, Ky.

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At. 11:05 p. m., October 30, 1909, Alfred Baker, colored, age about 22 years, residence Junction City, Ky., trespasser, was run over and instantly killed within city limits at Lawrenceburg, Ky., by freight train, extra 764.

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KENTUCKY & TENNESSEE RAILWAY CO.

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G. S. Dudley, killed at Gamacraw, evening of May 25, 1909. Dudley resided at Burnside, Ky.

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Synopsis of Important Com-  
plaints Filed and Dis-  
posed of 1908

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## SYNOPSIS OF IMPORTANT COMPLAINTS FILED AND DISPOSED OF 1908

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In compliance with Section 834 of the Kentucky Statutes, the following synopsis of complaints for the year 1908 is given for the information of the General Assembly of Kentucky:

LOUISVILLE COAL & COKE CO. ----- *Complainant,*

*vs.*

CHESAPEAKE & OHIO RAILWAY COMPANY AND

LOUISVILLE & NASHVILLE R. R. CO. ----- *Respondents.*

MCCHORD, HINES AND NORMAN,

*Attorneys for Complainant.*

W. G. DEARING,

*Attorney for L. & N. Railroad Company.*

HELD.

1. That by the execution of a contract dated March 23, 1895, the defendant, Chesapeake and Ohio Railway Company did not buy the fee simple title to any part of the road belonging to Louisville and Nashville Railroad Company, but only purchased the use of said road under certain restrictions, viz, for a period of 100 years, for the purpose of running its through trains, passenger and freight, to and from Lexington and Louisville, via Christiansburg and Shelbyville.

"The Louisville & Nashville Railroad Co., did not relinquish to the Chesapeake & Ohio Railway Company the possession or control of the road. The contract quoted and filed is nothing more than a traffic arrangement."

L. & N. R. R. Co., v. Breeden's  
Administrator, 111 Ky., Page 745.

"The contract between the two railroad companies prohibits the Chesapeake & Ohio Railway Company from doing any local passenger or freight business from points between Lexington and Louisville -----."

Commonwealth of Kentucky v.

L. & N. R. R. Co., 27 Ky., page 497.

2. "The Louisville & Nashville Railroad Company must furnish reasonable and proper facilities for receiving, forwarding and delivery of passengers and property at rates which are in themselves reasonable. When it fails to do this, it should be condemned not only by this Commission, but by the courts."

3. Louisville is a basing point, and is entitled to a less freight rate than Lyndon or Lakeland.

### THE COMPLAINT.

Louisville, Ky., March 7, 1908.

*State R. R. Commission,*  
Frankfort, Ky.

GENTLEMEN: We herewith take the liberty to call your attention to the differential in freight rates on coal between Lexington and Louisville. Taking the Louisville & Eastern Power House, as well as the Lakeland Asylum, as an instance. The L. & N. R. R. Co., has a nut and slack rate to Lyndon of \$1.25 per ton, and to Lakeland \$1.35 per ton, and on lump and run of mine coal, the rate to Lyndon is \$1.40 per ton, and to Lakeland \$1.50 per ton. Whereas, coals coming off the C. & O. R. R. for either of these places, is compelled to come all the way to Louisville on the \$1.00 per ton through rate and then be hauled back to Lyndon at 60c per ton, and back to Lakeland at 70c per ton. The 60c per ton and 70c per ton, all goes to the L. & N. R. R. Co., and besides this, they get a trackage on everything the C. & O. R. R. Co. pulls from Lexington to Louisville. We only cite these two cases as an instance, but we can show you another case. Taking Pleasureville for instance. We have shipped coal there, from Louisville coming off of the C. & O., and we had to pay \$1.00 per ton, to Louisville, and an additional \$1.50 per ton back to Pleasureville, a distance about 40 miles.

We make this complaint for the reason, that the Louisville & Eastern Ry., as well as the Lakeland Asylum, prefer to burn coal off of

the C. & O., and are desirous now of placing business with us, but cannot do so, with such conditions as we have shown existed. We have had this matter up with Mr. McChord, and he advised us to take it up with you, saying he was satisfied, that if you thoroughly understood the situation, you would take action without delay.

Hoping to hear from you at your earliest convenience, we are,

Yours very truly,

LOUISVILLE COAL & COKE CO.,  
By C. S. Meddis, *Pres. and Mgr.*

### AMENDED COMPLAINT.

The complainant, Louisville Coal & Coke Company, says it is a corporation created, organized and existing under the laws of the Commonwealth of Kentucky with its principal place of business in the city of Louisville, Kentucky. That it is engaged in the purchasing of coal and coke and the sale thereof to dealers and consumers; that a large portion of the coal so purchased and sold by it is acquired from mines situate in what is known as the Kentucky, Elkhorn and Ashland Coal & Iron districts in Kentucky, and the Kanawha district in West Virginia, all upon the lines of the defendant, The Chesapeake & Ohio Railway Company. Complainant further states that said Chesapeake & Ohio Railway Company owns, leases and operates a line of railway from said mines through the counties of Pike, Johnson, Lawrence, Boyd, Carter, Rowan, Bath, Montgomery, Clark, Fayette, Scott, Woodford, Franklin, Henry, Shelby, Jefferson and other counties in Kentucky; that said defendant, Chesapeake & Ohio Railway Company owns and operates its line of railway, either by direct ownership or lease, extending through the counties aforesaid from the mines in said Kentucky, Elkhorn, and Ashland Coal & Iron districts in Kentucky and from what is known as the Kanawha district in West Virginia, and terminating in the city of Louisville, Ky. That portion of said defendant's road extending from Lexington, Ky., to Louisville, Ky., was acquired from its co-defendant, the Louisville & Nashville Railroad Company, by a contract or lease dated March, 1895, by the terms of which a joint interest in said line of railway extending from Lexington to Louisville, for certain considerations therein named, paid and to be paid by said defendant, Chesapeake & Ohio Railway Company, to its co-defendant the Louisville & Nashville Railroad Company, was sold

by the Louisville & Nashville Railroad Company to its co-defendant, the Chesapeake & Ohio Railway Company, said latter company paying to the former, in lieu of a purchase price, a rental equal to one-half of the interest at six per cent per annum on the value of the entire track, bridges, structures and other superstructures and also a rental equal to one-half of the interest at six per cent per annum on the value of such additional tracks, bridges, structures or improvements as might be necessary for the joint use of said property and by the terms of said contract said defendant, Chesapeake & Ohio Railway Company, did become its joint owner of the use of the said railway from Lexington to Louisville, Kentucky, for the term of one hundred years, and each of said defendants did assume the joint cost and expenses of maintenance, repairs, renewals and improvements of said railroad in common use aforesaid, and one-half of the wages of employes in the joint service of said defendants in the operation of said railroad.

Complainant further states that by the further terms of said contract said defendants undertook to limit the use of said railroad between Lexington and Louisville in such a way as to deprive this complainant and all other shippers of the right to require of the defendant, the Chesapeake & Ohio Railway Company, that it perform service for all shippers upon its said line of railway to points between Lexington and Louisville; that is to say, said contract undertook to prevent said defendant, Chesapeake & Ohio Railway Company, from transporting either persons or property to or from points between Lexington and Louisville and in pursuance of said agreement said defendant, Chesapeake & Ohio Railway Company, refuses to bill, transport or deliver coal from the mines aforesaid to any of the local stations between Lexington and Louisville, except Frankfort, Midway and possibly some few other stations not now known to complainant, all of which is in violation of law and contrary to defendant's duties as a common carrier and contrary to the provisions of Section 792, Kentucky Statutes, which provides:

“When two railroad companies use the same line of roadway in the operation of their trains, they shall afford along such roadway reasonable and proper facilities for the receiving, forwarding, and delivering of passengers and property without discrimination in their rates and charges. All contracts made

between such companies, in so far as the same shall conflict with the provisions of this section, are hereby declared to be null and void, and contrary to public policy. The Railroad Commissioners shall enforce the provisions of this section by imposing the same penalties for violations thereof as is provided in section 820 of this act for violation of said section."

Complainant says it is the duty of the said defendants to so adjust their rates as to permit this defendant and all other shippers on the line of the defendant, Chesapeake & Ohio Railway Company, to consign coal to be transported from said mines to all of said points between Lexington and Louisville at a rate not exceeding \$1.10 per ton, this rate being the maximum rate heretofore fixed by this Honorable Board as just and reasonable for said service.

Complainant further states that the rates now charged, collected and received by defendant Louisville & Nashville Railroad Company to all of said points between Lexington and Louisville from each of said designated points for the transportation of coal are extortionate, unjust and unreasonable, and complainant and all other shippers are entitled to have made and published just and reasonable rates for the transportation of coal from said mines to all of said local points between Lexington and Louisville.

Complainant says that under the present adjustment of rates by defendants for the transportation of coal from said designated mines said coal is transported by the defendant Chesapeake & Ohio Railway Company through all of said local points between Lexington and Louisville, Kentucky, to Louisville at a rate of \$1.00 per ton, thence transported back over the same line to said respective local points by the defendant Louisville & Nashville Railroad Company with an additional charge ranging from 60 cents per ton to \$— per ton, and each of said defendants refuse to deliver said coal at said local points in transit from said mines without first taking it to Louisville, all of which is illegal and in violation of the rights of this complainant and of all other shippers.

Complainant says that by reason of this unlawful and arbitrary adjustment of rates by defendants and their refusal to transport and deliver coal from said mines to said local points between Lexington and Louisville, complainant is unable to deliver to its customers at said local points coal purchased for sale to them from said mines, and

said arrangement, besides being unlawful in and of itself, is an unjust and unreasonable discrimination against complainant and its said patrons and all other shippers of coal from said mines to said local points.

WHEREFORE, complainant prays that an order be entered by this honorable commission requiring defendants to transport and deliver coal from said mines to all points between Lexington and Louisville at the rate of \$1.10 per ton, and that said contract between defendants be declared illegal, null and void in so far as the same conflicts with the rights of this complainant and other shippers, and that such proceedings be instituted to the end that said defendants may be required to cease and desist from said illegal and unjust practices and complainant prays for all other, general, special and proper relief in the premises.

(Signed)

McCHORD, HINES & NORMAN,  
*Attorneys for Complainant.*

#### AMENDED COMPLAINT.

The complainant herein for amendment to its complaint states that the contract between the defendants herein whereby the defendant Chesapeake & Ohio Railway Company acquired from its co-defendant, the Louisville & Nashville Railroad Company, the right to use jointly with that company its line from Lexington, Ky., to Louisville, Ky., was executed March 23, 1895, and not in March 1893, as alleged by mistake in its original complaint, and complainant further states that the allegation made in its original complaint that defendants undertook by said contract to limit the use of said railway between Lexington and Louisville in such a way as to prevent said Chesapeake & Ohio Railway Company from transporting property to points between Lexington and Louisville is not true and that said allegation was made by mistake of the draughtsman, and that the refusal of said Chesapeake & Ohio Railway Company to transport or deliver coal from mines on its line east of Lexington, Ky., to points between Lexington, Ky., and Louisville, Ky., is not in pursuance of said contract. The complainant further states that the defendant did not undertake or attempt by said contract to prevent the said Chesapeake & Ohio Railway Company from transporting property received by said Company east of Lexington, Ky., to points

between Lexington, Ky., and Louisville, Ky., and that said contract does not, either by its terms or by operation of law, impose upon said Chesapeake & Ohio Railway Company any obligations to refrain from transporting coal from mines on the line of said company east of Lexington, Ky., to points between Lexington, Ky., and Louisville, Ky.

The complainant further states that the defendant Louisville & Nashville Railroad Company claims that its co-defendant, the Chesapeake & Ohio Railway Company, has no right under said contract, to transport coal from mines east of Lexington, Ky., to points between Lexington, Ky., and Louisville, Ky., and there deliver same, and for that reason the said Chesapeake & Ohio Railway Company refuses to deliver coal at points between Lexington, Ky., and Louisville, Ky. Complainant further states that if said contract be construed as evidencing the intention of the parties thereto to deprive the Chesapeake & Ohio Railway Company of the right to deliver, at points between Lexington, Ky., and Louisville, Ky., coal taken up by said company east of Lexington, Ky., said contract is void to that extent as alleged by complainant in its original complaint.

WHEREFORE, complainant prays as in its original complaint, and for all general, special and proper relief.

(Signed)

McCHORD, HINES AND NORMAN,  
*Attorneys for Complainant.*

Defendants responded orally and the Commission entered following opinion and order:

#### OPINION AND ORDER.

This complaint was filed by complainant on March 7, 1908; the first amended complaint was filed April, 1908, and the second amended complaint was filed June 9, 1908.

The Louisville & Nashville Railroad Company owns a line of Railroad extending from Lexington, Kentucky, to Louisville, Kentucky, through Christiansburg, via Shelbyville, and also through Christiansburg via Pleasureville, Eminence, LaGrange, and Anchorage, to Louisville.

From mines on its own road the Louisville & Nashville Railroad Company has a nut and slack rate through Louisville to Lyndon,



Kentucky, of \$1.25 per ton, and to Lakeland, Ky., of \$1.35 per ton, and on lump and run of mine coal the rate to Lyndon, Kentucky, is \$1.40 per ton, and to Lakeland, Kentucky, is \$1.50 per ton. It also appears that the rate from Louisville on the Louisville & Nashville Railroad Company's road to Lyndon is 60c per ton, and to Lakeland is 70c per ton. It also appears that the through rate on coal from all points east of Lexington, Kentucky, on the Chesapeake & Ohio Railway Company's road to Louisville is \$1.00, thereby making the rate from points on the Chesapeake & Ohio Railway, east of Lexington, to Lyndon, Kentucky, \$1.60 per ton, and to Lakeland, Kentucky, \$1.70 per ton. This rate is made up of the through rate of \$1.00 to Louisville by the Chesapeake & Ohio Railway, and the local rate over the Louisville & Nashville Railroad Company's line from Louisville back to the local points, Lyndon, Kentucky, and Lakeland, Kentucky.

In this complaint it is alleged that the Chesapeake & Ohio Railway Company owns a joint interest in the line of railroad extending from Lexington, Kentucky, to Louisville, Kentucky, through Christiansburg via Shelbyville; that it acquired said joint interest by reason of the contract executed between it and the Louisville & Nashville Railroad Company on March 23, 1895, and that by reason of the ownership of this joint interest it should be required to carry coal from points east of Lexington, Kentucky, and deliver same at any point on the joint line between Lexington and Louisville for \$1.10 per ton.

Complainant further states that the rates now charged, collected and received by defendant, Louisville & Nashville Railroad Company, to all of said points between Lexington and Louisville from each of said designated points, for the transportation of coal are extortionate, unjust and unreasonable, and complainant and all other shippers are entitled to have made and published just and reasonable rates for the transportation of coal from said mines to all of said local points between Lexington and Louisville.

The petition further states that if the said contract undertook to prevent said Chesapeake & Ohio Railway Company from transporting either persons or property to or from points between Lexington and Louisville, and in pursuance of said agreement said defendant, Chesapeake & Ohio Railway Company, refuses to bill, transport or deliver coal from the mines aforesaid to any of the local stations between Lex-

ington and Louisville, except Frankfort, Midway and possibly some few others, same is in violation of law and contrary to provisions of Section 792 of the Kentucky Statutes, which reads as follows:

"When two railroad companies use the same line of roadway in the operation of their trains, they shall afford along such roadway reasonable and proper facilities for the receiving, forwarding, and delivering of passengers and property without discrimination in their rates and charges. All contracts made between such companies, in so far as the same shall conflict with the provisions of this section, are hereby declared to be null and void, and contrary to public policy. The Railroad Commissioners shall enforce the provisions of this section by imposing the same penalties for violations thereof as is provided in section 820 of this act for said violations of said section."

Complainant then prays that an order be entered by the Railroad Commission requiring defendant to transport and deliver coal from points on the Chesapeake & Ohio Railway Company's line east of Lexington, in the Elkhorn and Ashland Coal & Iron Districts in Kentucky, and the Kanawha District in West Virginia, to all points between Lexington and Louisville at \$1.10 per ton, and that said contract between defendants be declared illegal, null and void in so far as same conflicts with the rights of the complainant and other shippers.

The defendants each filed a demurrer to plaintiff's petition and complaint; and also each filed a motion requiring complainant to elect against which defendant it will prosecute its complaint. The contract dated March 23, 1895, was filed as evidence in the case. The case was argued by complainants, and also by counsel for defendants, and was afterwards briefed by both sides for the benefit of the Commission.

The Commission has carefully read and considered the complaints made, including the contract between the two defendant companies, and the briefs of each side and the authorities there cited, and is of the opinion that by the execution of the contract dated March 23, 1895, the defendant, Chesapeake & Ohio Railway Company, acquired a joint interest of the use of the road between Lexington and Louisville for a term of 100 years for the purpose, and only purpose, of running its through train, both passenger and freight, to and from Lexington and Louisville via Christiansburg and Shelbyville. By this

contract the Chesapeake & Ohio Railway Company did not buy the fee simple title to any part of the road belonging to the Louisville & Nashville Railroad Company, but only purchased the use of it under certain restrictions which are contained in the contract.

The Court of Appeals of Kentucky said, in the case of Louisville & Nashville Railroad Company vs. Breeden's Administrator, 745, 111 Ky.:

"The Louisville & Nashville Railroad Company did not relinquish to the Chesapeake & Ohio Railroad Company the possession or control of the road. The contract quoted and filed is nothing more than a traffic arrangement."

Again the Court of Appeals in construing this contract in the case of Commonwealth of Kentucky vs. Louisville & Nashville Railroad Company, 27 Ky., page 497, said as follows:

"The contract between the two railroad companies prohibits the Chesapeake & Ohio Railway Company from doing any local passenger or freight business from points between Lexington and Louisville; that is to say, that by the terms of the contract the Chesapeake & Ohio Railway Company acquired the right to run its through trains only over the road in question, and all business originating on the line between Lexington and Louisville, not including either of those points to the other, was to belong to the Louisville & Nashville Railroad Company exclusively, except passenger fares from points where the Chesapeake & Ohio Railway trains might be obliged to stop on account of railroad crossings, train orders, water, etc., in which event that Company was to receive 25 per cent of such fares and the Louisville & Nashville Railroad Company 75 per cent thereof."

In the light of these decisions of the Court of Appeals of Kentucky, the Commission is led to the conclusion that it has no power to compel the Chesapeake & Ohio Railway Company to deliver coal at points between Lexington and Louisville, and that no obligations rest on the Chesapeake & Ohio Railway Company to deliver coal at said points under the law and under the provisions of its contract. The Commission undoubtedly took this view of the contract in the case of

R. F. Peake, and others, vs. Louisville & Nashville Railroad Company and the Chesapeake & Ohio Railway Company, decided June 27, 1901. In that case the Commission said:

"The public has the right to the use of local passenger and freight train service over this line from Shelbyville to Christiansburg, and it is the duty of the Louisville & Nashville Railroad Company to either furnish this accommodation by the operation of its own trains, or to so reform its contract with the Chesapeake & Ohio Railway Company that the latter Company may perform this service."

In that case the Commission clearly recognized the fact that the Chesapeake & Ohio Railway Company could not, under the provisions of this same contract, perform the services applied for in that case, and the same kind of service which is applied for in this case.

The next question raised by complainant is that the contract dated March 23, 1895, is null and void and should be cancelled in so far as it prevents the Chesapeake & Ohio Railway Company from delivering coal hauled from points east of Lexington to Lyndon, Kentucky, Lakeland, Kentucky, and other points between Lexington and Louisville.

Under section 792 of the Kentucky Statutes it provides that when two railroad companies use the same line of road-way in the operation of their trains, they shall afford along such road-way reasonable and proper facilities for the receiving, forwarding and delivering of passengers and property without discrimination in their rates and charges.

The shippers at Lyndon, Lakeland, and other points on the line of road between Louisville and Lexington are entitled to the same reasonable and proper facilities for receiving, forwarding and delivering of passengers and property without discrimination in rates and charges as they were prior to the execution of the contract dated March 23, 1895. The running of its through trains by the Chesapeake & Ohio Railway Company over the leased line did not give any unusual or extra advantages to the people, traveling public and shippers who live on this line between Lexington and Louisville, nor does the contract executed March 23, 1895, excuse the Louisville & Nashville Railroad Company from doing its full duty toward the shippers and the traveling public.

The Louisville & Nashville Railroad Company must furnish reasonable and proper facilities for receiving, forwarding and delivering of passengers and property at rates which are in themselves reasonable. When it fails to do this it should be condemned not only by this Commission but by the Courts.

The Commission is of the opinion that a through rate of \$1.00 on coal is not such a discrimination in rates or charges in favor of Louisville and against points between Lexington and Louisville as is contemplated by Section 792 of the Kentucky Statutes, and as will warrant the Commission in declaring the contract between the Louisville & Nashville Railroad Company and the Chesapeake & Ohio Railway Company null and void. Under the well settled law of the country, Louisville, Kentucky, is a basing point and is entitled to a less freight rate than Lyndon and Lakeland.

The complainant charges that the rates now collected, and received by the defendant, Louisville & Nashville Railroad Company, to all of said points between Lexington and Louisville from each of said designated points for the transportation of coal, are extortionate, unjust and unreasonable. This part of the complaint will be further investigated by the Commission, and if the rates on coal in and of themselves are unreasonable, unjust and extortionate, then an order will be made reducing said rates to what the Commission considers a reasonable charge for such services.

(Signed)

A. T. SILER, *Chairman*,  
MCD. FERGUSON,  
L. P. TARLTON.

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Azbill-Strossman Coal Company, of Winchester, Kentucky. Rate on coal from Kilgore, Kentucky, to Frankfort, Kentucky. Settled.

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Kentucky Supply Company vs. Cincinnati Southern, and Louisville & Nashville Railroad Companies, relative to car capacity. Dismissed.

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T. L. Bush—Relative to extending time for charging storage on freight after forty-eight hours arrival at stations. Dismissed.

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Mayor of Madisonville, *et al.*, vs. Louisville & Nashville Railroad Company. Inadequate depot facilities. Dismissed settled.

Residents of Depoy vs. Illinois Central Railroad. Inadequate depot facilities. Complaint dismissed.

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Citizens of Delaplain, Scott county. Abandonment of station at Delaplain by discontinuing agency at station. Pending. (Dismissed 1909.)

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By Citizens of Heath for depot. Under advisement. (Dismissed settled, 1909.)

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Citizens of Delaplain, Scott county, relative to depot facilities. Order in favor of complainants.

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Messrs. J. F. and S. L. Dodds Co., Hickman, Kentucky, vs. N. C. & St. L. Railroad Company. Rates on grain. This matter was taken up with the Interstate Commerce Commission, and was disposed of as follows, by Commissioner Harlan:

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"February 1, 1908.

*"The Railroad Commission of Kentucky,*

*"Frankfort, Kentucky.*

"Dear Sirs:—

"I have the honor to hand you herewith a copy of a letter which I have just addressed to Messrs. J. F. and S. L. Dodds Company, of Hickman, Kentucky, in relation to their informal complaint which was presented to this Commission with your letter of January 13th.

"Very respectfully,  
(Signed) JAS. S. HARLAN,

Enc.

*Commissioner."*

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"LETTER."

"February 1, 1908.

*"J. F. and S. L. Dodds Co.,*

*"Hickman, Kentucky.*

"Dear Sirs:—

"Your informal complaint of the rates on grain published by the Nashville, Chattanooga & St. Louis Railway Company

"from Hickman to various points in the south and southeast, "was presented to this Commission by the Railroad Commission "of Kentucky. I at once took the matter up with the traffic of- "ficials and I have just received their reply, the substance of " which I here quote:

'Up to a comparatively recent date there was no oc-  
'casion for through rates on corn from Hickman to Missis-  
'sippi Valley territory, there being no business moving from  
'Hickman, so far as we were advised, to the territory in  
'question. The rates quoted Messrs. Dodds by our Assistant  
'General Freight Agent in his letter of December 12th were  
'made on lowest combination. Upon receipt of advice from  
'Messrs. Dodds that they would probably have shipments  
'of corn to move from Hickman to points in the territory  
'involved, we arranged to provide joint through rates by  
'the publication of advance notice No. 37 to Supplement No.  
'3 to our Southeastern Tariff No. 4, Amendment No. 90  
'to I. C. C. 1273-A, issued January 13, 1908, effective Feb-  
'ruary 22, 1908. This supplement provides for through  
'rates on corn from Hickman to all points in the territory  
'in question. A copy of this tariff has been furnished  
'Messrs. J. F. and S. L. Dodds Company, and a copy has  
'also been filed with the Commission.'

"I trust that you will find the new adjustment of the rates  
"entirely satisfactory. But if the cause of your complaint is not  
"entirely removed I shall be very glad to hear from you further.

Very respectfully,

(Signed) JAS. S. HARLAN,  
*Commissioner.*"

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Louisville Veneer Mills vs. L. & E. Railroad Company and Ohio  
& Kentucky Railway Company. Dismissed without prejudice.

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W. C. Bland vs. I. C. Railroad Company. Relative to condition  
of crossing at City of Uniontown, Kentucky. Order requiring re-  
pairs.

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Broadhead-Garrett Co. vs. Mountain Central R. R. Co. Exorbi-  
tant freight rates on logs. Dismissed at request of complainants.

F. M. Hutchison, *et al.*, vs. Illinois Central Railroad Company. Relative to establishing crossing bells near Henderson. Order in favor of complainants.

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Henderson Elevator Company vs. Louisville & Nashville Railroad Company. Relative to car service bills. Pending. (Decided, 1909, favor complainant.)

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Citizens of Campton vs. Mountain Central Railroad Company. Complaints as to all rates of said company. Decided for defendant.

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Crescent Coal Company vs. Louisville & Nashville Railroad Company. Relative to switching. Pending. (Dismissed, 1909.)

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Citizens of Hopkinsville vs. Louisville & Nashville Railroad Company and Illinois Central Railroad Company. Depot facilities. Pending. (Dismissed, 1909—request of complainants granted by respondents.)

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Louisville Board of Trade vs. The Railroads of Kentucky.  
LOUISVILLE BOARD OF TRADE, -----Plaintiff.

*vs.*

THE RAILROADS OF KENTUCKY, -----Defendant.

### PETITION.

The Louisville Board of Trade respectfully represents to your honorable Commission that the action of your Commission in heretofore exempting certain places in Kentucky known as "common points" from the operation of the long and short haul law of Kentucky as embodied in Section 218 of the Kentucky Constitution and Section 320 of the Kentucky Statutes has not prevented said law from seriously crippling the commercial and industrial interests of the State of Kentucky, and that in order to give full relief to those interests it is necessary that every point in the State should, in the making of rates, have the benefit of its proximity to the nearest common point. The plaintiff further represents that the fact that it has been unlawful for the railroads of Kentucky to be governed by that principle



in the making of rates has caused the long and short haul law to operate as a discrimination against the business interests of Louisville and of the State of Kentucky in favor of the business interests of other States, and especially of the cities of other States just beyond the Kentucky border, and has caused the loss of many hundreds of thousands of dollars annually to the merchants, producers and manufacturers of the State of Kentucky.

WHEREFORE, the plaintiff prays that your honorable Commission so far relieve the railroads of Kentucky from the operation of said long and short haul law as to authorize them to make rates based upon the "lowest combination."

(Signed) McCHORD, HINES AND NORMAN,  
*Attorneys for Plaintiff.*

Louisville, Ky., Nov. 24, 1908.

#### ORDER BY THE COMMISSION.

The Commission having heard the application of the Louisville Board of Trade for an order relieving the railroads of Kentucky from the operation of the long and short haul law to the extent of permitting them to make rates based on the lowest combination, and having fully investigated the same, does hereby relieve the railroads of Kentucky from the operation of said law as embraced in Section 218 of the Kentucky Constitution and Section 820 of the Kentucky Statutes, to the extent of permitting said companies to make rates based on the lowest combination in all cases in which such lowest combination would give a lower rate than that which would otherwise apply.

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Quicks Run & Ohio River Turnpike Co., vs. Chesapeake & Ohio Railroad Company. (Settled.)

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Kentucky Supply Co. vs. L. & N. Railroad Co., relative to charges for maximum car capacity. Dismissed.

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Citizens of Fallsburg vs. C. & O. Ry. Co., relative to depot at Fuller's Station. Pending. (Dismissed, 1909.)

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Lawton Sand and Supply Co. vs. C. & O. R'y Co. and L. & N. R. R. Co., relative to rates on sand, Tygart to Paris, Nicholasville and Richmond. Pending. (Dismissed, 1909.)

Lawton Sand and Supply Co. vs. C. & O. Railway Co. Rate on sand, Tygart to Frankfort. Adjusted.

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W. O. Howard, Hendricks, Ky., relative to extension of time for charging storage. Pending. (Dismissed, 1909.)

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George Faulkner and others vs. C. & O. Ry. Co. and L. & N. R. R. Co. Rate on coal, Peach Orchard to Sparta, Ky. Withdrawn.

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Mrs. Kate Stoughton vs. C. & O. Ry. Co., Depot facilities at Burgess. Dismissed.

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J. E. Byrley vs. L. & N. R. R. Co. Extortionate passenger fare. Dismissed.

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Nanz Floral Co. vs. L. & N. R. R. Co. Discrimination. Pending. (Dismissed, 1909.)

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W. E. Allen vs. Illinois Central Railroad Company. Inadequate depot facilities. Pending (Dismissed, 1909.)

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Citizens of Erlanger, *et al.*, vs. C., N. O. & T. P. Railroad Company. Discontinuing passenger service. Pending. (Dismissed, 1909.)

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Citizens of Bardstown Junction vs. Louisville & Nashville Railroad Company. Inadequate freight depot facilities. Pending.

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Commercial Club of Paris vs. Louisville & Nashville and Frankfort & Cincinnati Railroad Company. Inadequate depot facilities. Pending. (Dismissed, 1909.)

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Citizens of Georgetown vs. C., N. O. & T. P. Railroad Company. Inadequate depot facilities. Pending (Settled, 1909.)

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J. W. Kitchen Lumber Co., Ashland, Kentucky, vs. Morehead & North Fork R. R. Co., relative to rates on lumber. Referred to rate clerk. Pending. (Dismissed, 1909.)

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Frank Stafford vs. Chesapeake & Ohio Ry. Co. This complaint

grew out of overcharge on shipments of baled hay. Case was referred to Rate Clerk, and satisfactory adjustment reached by refund to plaintiff by defendant of all overcharges claimed.

A. J. May, *et al.*, vs. Chesapeake & Ohio Ry. Co., relative to inadequate depot facilities at Prestonsburg, Kentucky. Referred to rate clerk, and investigation ordered. Pending. (Dismissed, 1909.)

### THE COMPLAINT.

|   |   |               |
|---|---|---------------|
| A. J. MAY, COUNTY ATTORNEY OF FLOYD COUNTY<br>J. P. HARRIS, COUNTY JUDGE OF FLOYD COUNTY,<br>WILL H. LAYNE, MAYOR CITY OF PRESTONSBURG,<br>J. M. WEDDINGTON, CITY COUNCILMAN,<br>O. P. POWERS, CITY COUNCILMAN,<br>HIRAM LAFERTY, CITY COUNCILMAN,<br>W. H. JONES, CITY COUNCILMAN,<br>J. POLK HARRIS, CITY COUNCILMAN, | } | Complainants. |
|---|---|---------------|

vs.

CHESAPEAKE AND OHIO RAILWAY COMPANY -----Defendants.

*To the Honorable, the Kentucky Railroad Commission:*

Your petitioner, A. J. May, County Attorney, and James P. Harris, County Judge of Floyd County, Kentucky, come and represent and state that they are interested in securing for their constituents, the citizens of Floyd county and the traveling public, more convenient passenger depot facilities at Prestonsburg, Kentucky, for various reasons hereinafter stated.

Your petitioner and complainants, Will H. Layne, J. M. Weddington, O. P. Powers, W. H. Jones, Hiram Laferty and J. Polk Harris, for complaint against the defendant herein, state that they are the Mayor and City Councilmen of the city of Prestonsburg, Kentucky, and as such are interested in securing more convenient and better passenger depot facilities for their constituents, the citizens of Prestonsburg, Kentucky, and the traveling public, for the various reasons hereinafter stated, to-wit:

That the present freight and passenger depot as now established

and located is inconvenient, and so located as to be difficult to get to and from by persons traveling from the city of Prestonsburg to said depot; that it is located on the North side of Middle Creek, and the opposite side of Big Sandy River, a distance of one-half mile or more from the city, and a like distance from a high-way bridge spanning Big Sandy River.

That passengers traveling on the trains going east, during the late fall, winter and spring months are required to get off the trains at this distant station and walk on the track of the defendant, many times in front of moving trains, and that for half or more of the distance to be traveled, there is absolutely no way of traveling except on the railroad track and many times in front of moving trains. That immediately after leaving the depot, as now located, travelers must pass over a very high railroad bridge crossing Middle Creek and continue upon the tracks of the defendant; that during the winter and spring months, in fact, all the year, except in summer months, passengers are forced to go all this distance through almost impassable mud and water, or walk upon the track of defendant, as hereinbefore stated, and many times at a very late hour in the night and without light by which to travel; that there is no hack line or other means of ready transportation for baggage from said depot to the city, and the only means of transporting such baggage is by railroad trucks, or by such passengers as are able to carry the same.

The petitioners and complainants would further represent and show to this Honorable Board that a highway bridge constructed of steel upon concrete piers, has recently been built across Big Sandy River at a point near the center of the city so as to connect the main, principal part of the city with the defendant's line of railroad, and that adjacent to the end of said bridge is ample room and a convenient place at which to construct a passenger depot upon the defendant's right of way and that said high-way bridge is strong, substantial, safe and well-built, with passenger foot-path in addition to the driveway, and that by the construction of a passenger depot and baggage station at the west end of said bridge, the danger to human life and the many inconveniences of the public and those desiring to travel upon defendant's trains would be practically eliminated. That the United States Mails are carried by messenger from the present depot along defendant's track to and across said bridge to the city of Prestonsburg, and on account of the difficulties and inconveniences resulting from the loca-

tion of the said depot and the method of transporting said mails, and the volume of mail to be carried, they arrive at the city post office very late at night during winter months and many times so late that the people of the town do not get their mails.

Wherefore plaintiffs pray that necessary orders and decrees of the Commission be entered, requiring the defendant, Chesapeake & Ohio Railway Co., to provide a suitable passenger and waiting room, together with all necessary rooms for baggage, etc., at the west end of the Prestonsburg bridge. They pray for costs and for all other proper and appropriate relief, to which they may be entitled.

(Signed) A. J. MAY,  
Att'y for Plaintiffs.

STATE OF KENTUCKY,

Floyd County.

The affiant, O. P. Powers, says that the statements contained in the foregoing petition are true as he verily believes.

(Signed) O. P. POWERS,

Subscribed and sworn to by O. P. Powers this the 13th day of October, 1908.

(Signed) CLAUDE STEPHENS,  
Examiner Floyd Co., Ky.

Investigation of the above complaint was held at Ashland, Kentucky, where proof was taken by order of the Commission, after which briefs were filed by complainants and defendant, and the Commission went upon the ground and made personal investigation. (See order dismissing complaint, 1909.)

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STRAIGHT CREEK COAL MINING CO., . . . Complainant

vs. Rate on Coal.

L. & N. RAILROAD CO., . . . Respondent

T. J. ANDERSON AND WM. LOW,  
Attorneys for Complainant;

WM. G. DEARING,  
Attorney for L. & N. Railroad Co.

(Pending.)

BLUE GRASS TRACTION COMPANY ----- *Plaintiff.*  
*vs.* Relative to interchanging of cars.—Physical connection.

CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY  
 COMPANY ----- *Defendant.*

Order favor complainant, entered February 5th, 1909.

W. CLARK AND OTHERS ----- *Complainants.*  
*vs.* Rate on Coal, Pleasant, View, Ky., to Williamsburg, Ky.  
 LOUISVILLE & NASHVILLE RAILROAD CO ----- *Respondent.*  
 Dismissed settled.

E. G. ASHER, REVENUE AGENT, BELL COUNTY, KY ---- *Complainant.*  
*vs.* Assessment of railroad property.  
 STRAIGHT CREEK COAL & COKE CO ----- *Respondent.*  
 Pending.

EAST TENN., COAL CO ----- *Complainant.*  
*vs.* Claim for damage to ventilating fan.  
 L. & R. R. Co. ----- *Respondent.*  
 Settled.

CARLISLE MILLING CO ----- *Complainant*  
*vs.* Rate on empty flour barrels Cincinnati to Carlisle.  
 L. & N. R. R. Co ----- *Respondent.*  
 Dismissed with directions to take same up with Interstate Commerce Commission.

J. B. WALKER.  
*vs.* Relative to separate coach law not observed between Bur-  
 gin and Lexington.

L. & N. R. R. Co.  
 Information given to Mr. John R. Allen, Commonwealth's Attorney,  
 Lexington, Kentucky.

R. T. LEVY.  
*vs.* Relative to mileage books.

L. & N. R. R. Co.  
 Dismissed.

STRAIGHT CREEK COAL CO. ----- *Complainant,*  
*vs.* Freight Rates.  
 L. & N. R. R. Co. ----- *Defendant.*  
 Dismissed, settled.

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PLEASANT VIEW JELICO CO. ----- *Complainant,*  
*vs.* Switching charges at Pleasant View.  
 L. & N. R. R. Co. ----- *Defendant.*  
 Dismissed, settled.

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CITIZENS OF PADUCAH ----- *Complainants*  
*vs.* Crossings at Paducah.  
 ILLINOIS CENTRAL R. R. Co. ----- *Defendant.*  
 Dismissed, settled.

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A. S. PETREY ----- *Complainant,*  
*vs.* Rate on Printing press and box of tools.  
 L. & N. R. R. Co., and LEXINGTON & EASTERN RY. Co. ----- *Defendant.*  
 Dismissed, settled.

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TROSPER COAL CO. ----- *Complainant,*  
*vs.* Demurrage charges.  
 L. & N. R. R. Co. ----- *Defendant.*  
 Dismissed, settled.

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TRUSTEE OF MAMMOTH CAVE ESTATE ----- *Complainant,*  
*vs.* Charging violation of sections 773, 783, 784, 816  
 and 817 of Kentucky Statutes.  
 MAMMOTH CAVE R. R. Co. ----- *Defendant.*  
 Pending.

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SHIPPERS OF LOT, KY. ----- *Complainants,*  
*vs.* Demanding side track at Lot, Ky.  
 L. & N. R. R. Co. ----- *Defendant.*  
 Dismissed.

MAHAN JELICO COAL Co. ----- *Complainant*,  
*vs.* Overcharge.  
 L. & N. R. R. Co. ----- *Defendant*.  
 Settled.

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KENTUCKY SINGLETREE & SPOKE Co. ----- *Complainant*.  
*vs.* Overcharge on turned singletrees and neck yokes.  
 C., N. O. & T. P. Ry. Co. ----- *Defendant*.  
 Dismissed, settled.

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F. M. GILPIN ----- *Complainant*  
*vs.* Storage charges.  
 L. & N. R. R. Co. ----- *Defendant*.  
 Dismissed, settled.

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OWENSBORO SAND-LIME BRICK Co. ----- *Complainant*.  
*vs.* Placing of cars at Owensboro, Ky.  
 L. H. & St. L. Ry. Co. ----- *Defendant*.  
 Dismissed, settled.

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WHEELER-HOLDEN Co. ----- *Complainant*.  
*vs.* Shipment of cross-ties, Meyers, Kentucky, to Buffalo, New York.  
 L. & N. R. R. Co. ----- *Defendant*.  
 This was an interstate case, but upon request from this Commission, claim was paid by L. & N. Railroad Company.

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W. F. WATKINS ----- *Complainant*,  
*vs.* Overcharge on stock, cattle and sheep.  
 L. & N. R. R. Co. ----- *Defendant*.  
 Adjusted.

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CITIZENS OF STEPSTONE, KY. ----- *Complainant*,  
*vs.* Closing of depot at Stepstone.  
 C. & O. RAILROAD COMPANY ----- *Defendant*.  
 Dismissed.



BIG HILL COAL CO. ----- *Complainant,*  
*vs.* Rate on coal.

L. & A. R. R. Co. ----- *Defendant.*  
 Dismissed.

LOUISVILLE PAINT MFG. CO. ----- *Complainant.*  
*vs.* Damage to property.

L. & N. R. R. Co. ----- *Defendant.*  
 Dismissed.

QUICKS RUN & OHIO RIVER TURNPIKE ROAD CO. ----- *Complainant*

*vs.* Application for apportionment and certification  
 thereof, of taxes for its benefit upon respon-  
 dent's line of railway for the years 1891, to  
 1897 inclusive,

CHESAPEAKE & OHIO RY. CO. ----- *Respondent.*

THOS. R. PHISTER AND R. D. WILSON, *Attorneys for Complainant,*

WORTHINGTON, COCHRAN & BROWNING, *Attorneys for Respondent.*

### HELD.

1. That complainant was authorized by express charter authority to collect taxes upon property situated in its taxing district.

2. That there is no liability upon part of respondent for any taxes for years 1903 and 1906, for the reason that no assessment was made for either of said years as against the other property situated in complainant's taxing district.

3. Apportionment made for years 1891-2-3-4-5-6-7.

### THE PETITION.

Now comes the Quick's Run & Ohio River Turnpike Road Co., and states that it was by an act of the Legislature of 1887-8 in Chapter 1070 of said Acts and the amendment thereto in Chapter 143, Vol. 1, Page 229 of Acts of 1889-90 incorporated for the purpose of building a turnpike road in Lewis County, Ky., down the Quick's Run Valley to the mouth of Martin's Fork and thence to Carr's or Stout's Landing on the Ohio River, and thence to the City of Vanceburg. Said

charter and acts are referred to and made part hereof. It states that the Maysville & Big Sandy Railroad Co., now consolidated with the Chesapeake & Ohio Railroad Co., of Ky., on February 20th, 1890 and during the years 1891-2-3-4-5-6-7-8-9-1900-1-2-3-4-5, was the owner of 4 9-16 miles which runs in and through Lewis County and which was leased to and operated by the Chesapeake & Ohio Railway Co., and was in the district as laid out in the charter of said turnpike company for the purpose of taxation for the building of said turnpike at the rate of 50 cents on the hundred dollars of value for each of said years. It says that the said railroad property was duly assessed during each of said years for the said tax to be paid in said years as required by law but that the railroad company wholly failed to give to the auditor or the railroad commissioners any year of said years the amount of said road which was in said taxing district and liable for said tax for the building of said turnpike and for that reason the auditor has never complied with Sec. 4102 of the Ky. Stat., and he has not certified to nor notified the County Clerk of Lewis County the amount of the corporations property lying within the said taxing district, and the amount of taxation thereon, in said district for each or any of said years. That said turnpike corporation is still in existence and duly organized and has completed seven miles of said road or more but owing to the failure of the payment of the taxes as assessed against said railroad company it has not been able to complete the building of said road. It states that it is authorized and does hereby make said facts known to the auditor and petition and apply to the auditor to notify the County Clerk of Lewis County and said railroad company that there was 4 9-16 miles of said railroad liable for taxation in said taxing district in each and all of said years for the benefit of the Quick's Run & Ohio River Turnpike Road Co., and the assessed value of each of said years for the 4 9-16 miles of the said railroad company. Respectively,

THOS. R. PHISTER,

R. D. WILSON, *Attorneys.*

The affiant, R. D. Wilson, says he is the Agent of the Quick's Run & Ohio River Turnpike Co., and that he believes the statements in the foregoing petition are true.

R. D. WILSON, *Agent, etc.*

Subscribed and sworn to before me by R. D. Wilson this the 13th day of June, 1908.

GEO. T. WILLUM,

My Com. Ex. Feb. 26, 1912.

*Notary Public, Lewis County, Ky.*

## THE ANSWER.

Par. 1. Comes the defendant, The Chesapeake and Ohio Railway Company and for answer to the petition of the Quick's Run and Ohio River Turnpike Road Company, hereinafter referred to as the turnpike company, states that it is the identical "Chesapeake and Ohio Railway Company" mentioned in the petition of the said turnpike company; that during all the times mentioned in said petition until the first day of June, 1906, the Maysville & Big Sandy Railroad Company was the owner of the line of railroad described in the petition, and that during all of said times the defendant operated said line of railway under and by virtue of a lease made and entered into between the defendant and the said Maysville and Big Sandy Railroad Company; that on the first day of June, 1906, the said Maysville and Big Sandy Railroad Company consolidated with certain other railroad companies in this state forming a corporation known as The Chesapeake and Ohio Railway Company of Kentucky, and that under and by virtue of said consolidation the said, The Chesapeake and Ohio Railway Company of Kentucky, acquired and became the owner of the aforesaid line of railway; that from the first day of June, 1906 until the first day of July, 1907 this defendant, The Chesapeake and Ohio Railway Company, operated said line of railway under and by virtue of a lease made and entered into by and between it and the said, The Chesapeake and Ohio Railway Company of Kentucky; that on the first day of July, 1907 the said The Chesapeake and Ohio Railway Company of Kentucky sold and conveyed to this defendant the aforesaid line of railway and all other railway property owned by it in this state; that under and by virtue of said sale and conveyance and the laws of this state, defendant incurred and became responsible for any and all liabilities therefor incurred by its predecessors, the said Maysville and Big Sandy Railroad Company and the said The Chesapeake and Ohio Railway Company of Kentucky. Defendant states that by reason of the foregoing facts it is the sole party interested in this controversy. Defendant further answering denies that the railroad mentioned in the turnpike company's petition was, or is, in the taxing district of said turnpike company, or that it passes through same for 4 9-16 miles or any other distance. It denies that said railroad property was duly or at all assessed during each or any of said years for the payment of said taxes. It denies that said turnpike company is still in existence, or that it was duly or at all organized,

or that it has completed seven or more miles of said road. It denies that said turnpike company has been unable to complete said road because of the alleged failure of the defendant to pay said alleged taxes. It denies that there was or is 4 9-16 miles or any other part of said road liable for taxation in said taxing district in each or all or any of said years for the benefit of said Quick's Run and Ohio River Turnpike Road Company, or at all, and in support thereof the defendant refers to and makes a part hereof paragraphs, and the exhibits and other documentary evidence filed therewith.

Par. 2. The defendant further answering states that it is provided by Section 4736, Kentucky Statutes, as follows:

"Whenever in any county there is in force a system of taxation for turnpike purposes, under which part of such taxes are general and part thereof levied in turnpike road districts, then, when the same property is situate in more than one of such districts, such property shall be liable for only one such district tax, which district tax shall be that levied in the turnpike road district wherein is the turnpike road from which such property and the owner thereof derives the greater benefit, and the question which turnpike road does most benefit such property shall be determined by the board of county commissioners, in counties which have such board, and in other counties by the fiscal court; and when said question is determined, then the district taxes levied under such system shall, as to such property, be levied as if said property were situate only within said turnpike road district and not within any other."

Defendant states that so much of its line of railway as lies in the taxing districts of the complainant Turnpike Company, was during all of the times mentioned in the complaint, and now is, situated also within the taxing district of the Vanceburg & Stouts Lane Turnpike Road Company, a turnpike company organized and existing under and by virtue of the laws of the State of Kentucky. It states that at the April term, 1905, of the Lewis County Fiscal Court, this defendant and others similarly situated did, pursuant to the provisions of §4736, Kentucky Statutes, file their application in said court praying that their property situated in both of said taxing districts be released and discharged from taxation in the one of said districts that was of less use and benefit to applicants. And the said Fiscal Court, being sufficiently advised, adjudged that the property of defendant would be

more benefitted by the turnpike of the said Vanceburg and Stouts Lane Turnpike Road Company, and it was accordingly ordered that defendant be released, discharged and absolved from the payment of any taxes upon its said property to the complainant herein, and it was further ordered that such release and exception should take effect from the date of the passage of the act under and by virtue of which said order was made, which was on the 5th day of May, 1893. In support of the foregoing allegations, the defendant files and makes a part hereof, a copy of said order, duly attested by the Clerk of said Court, same being marked "Exhibit A." The defendant further states that for all the years herein involved up to and including the year 1907, it has paid to said Vanceburg & Stouts Lane Turnpike Road Company, through the Sheriff of Lewis county, its duly authorized collecting officer, all taxes due and owing to said Vanceburg & Stouts Lane Turnpike Road Company, for each of said years; said taxes amounting to the sum of \$10,481.21, in support whereof it files herewith the affidavit of Marshall Bertram, Sheriff of Lewis county, marked "Exhibit B." Wherefore the defendant pleads and relies upon the foregoing facts in bar of the right to collect taxes from, or to have any taxes assessed or apportioned against, this defendant for all or any of the years 1893 to 1905 inclusive.

Par. 3. The defendant further states that no assessment for the benefit of complainant was made against any other property in complainant's taxing district for the years 1892 and 1903, and no taxes were collected by complainant or its authorized taxing officer for either of said years. The defendant files herewith the affidavit of the County Court Clerk of Lewis County in support of the foregoing facts marked "Exhibit C." And it pleads and relies upon said facts in bar of the complainant's right to have any taxes apportioned for either of said years.

Par. 4. The defendant further answering states that the complainant has, by reason of the negligence, carelessness and slothfulness of itself and its officers, failed to collect any taxes upon any other property situated in its taxing district except for the years 1896, 1897, 1898 and 1899; that by reason of its own carelessness, it has made it impossible to collect any taxes off of said property prior to the year 1904; and in support of the foregoing the defendant refers to the affidavit of Marshall Betram, Sheriff of Lewis county, filed herewith

marked "Exhibit D." It states that it would be unjust, inequitable and contrary to law to subject this defendant to a burden of taxation not borne by the other property holders of this district and to which they cannot now be subjected. Wherefore, defendant pleads and relies upon the foregoing facts in bar of complainant's right to have any taxes apportioned or certified for its benefit, for any of the years prior to 1904, wherein no taxes have been collected off of the other property owners in said district.

Par. 5. The defendant further answering states that it is informed and believes that the complainant herein has collected much more than is necessary to enable it to complete the turnpike described in the complaint. It states that the County of Lewis has, under and by virtue of the laws of the State of Kentucky, issued \$10,861.25 worth of bonds to aid in and to assist the construction of the aforesaid turnpike, and in support whereof the defendant files herewith a list of the amounts and dates of said bond issued, duly certified to by the Clerk of the Lewis Circuit Court, same being marked Exhibit "E." It states that complainant has also collected the sum of \$1,558.28 in taxes to be used in the construction of said turnpike, in support whereof it files herewith affidavit marked "Exhibit D". It states that it is informed that said sums are more than sufficient to complete the construction of the aforesaid turnpike. It further states that if said amount is not sufficient, before any taxes are apportioned for any of the years mentioned in the complaint, the said turnpike company should be compelled to show what sum is necessary to complete said turnpike.

Wherefore the defendant pleads and relies upon said facts in bar of complainant's right to have any apportionment made for any of the years herein involved until it files herein an accounting showing what sum it is necessary for it to have to complete said turnpike which it may be lawfully entitled to.

Par. 6. The defendant further states that §190 of the Constitution of Kentucky provides as follows:

"No corporation in existence at the time of the adoption of this Constitution shall have the benefit of future legislation without first filing in the office of the Secretary of State an acceptance of the provisions of this Constitution."

It states that the complainant has never complied with this section and has never accepted the provisions of the Constitution, or any of

them, and has never filed any such acceptance in the office of the Secretary of State, and in support thereof it files herewith the affidavit of the Secretary of the State of Kentucky, marked "Exhibit F."

It states that the law of this State providing for the assessment of tangible property taxes of the railroad company for the benefit of complainant, or any taxing authority, was passed subsequent to the adoption of said Constitution, and was and is future legislation; and it states that the complainant was not and is not entitled to have any part of the defendant's tangible property taxes apportioned or certified for its benefit.

Par. 7. The defendant further states that §573, Kentucky Statutes, provided as follows:

"The provisions of all charters and articles of incorporation, whether granted by special act of the General Assembly or obtained under any general incorporation law, which are inconsistent with the provisions of this chapter, concerning similar corporations, to the extent of such conflict, and all powers, privileges or immunities of any such corporation which could not be obtained under the provisions of this chapter, shall stand repealed on September 28, 1897; and if the officers, managers or powers, privileges or immunities repealed by this section or inconsistent with the provisions of this chapter, relating to similar corporations, or which could not be obtained under this chapter, the officer, manager or agent so offending, and the corporation for which he acts, shall each be guilty of a misdemeanor, and fined for each offense not less than one hundred nor more than one thousand dollars, and upon the conviction of the corporation, the trial jury may, at their discretion, direct the forfeiture of its charter, or articles of incorporation, in which case the court shall so adjudge. After the twenty-eighth day of September, 1897, the provisions of this chapter shall apply to all corporations created or organized under the laws of this State, if said provisions would be applicable to them if organized under this chapter."

The defendant stated that by virtue of the act under which the

complainant was incorporated, a taxing district was provided in aid of the building of this turnpike company's road, and it alleges that this was a power and a privilege which could not be obtained under the provisions of Chapter 32, Kentucky Statutes; and it states and charges that by virtue of said §573, the provisions of said charter insofar as it provides for the creation of a taxing district, were, on and after the 28th day of September 1897, repealed, and complainant has no right to levy or collect, or to have levied or collected for its benefit, any tax in aid of the building of its turnpike road for any year after the 28th day of September, 1897.

Par. 8. The defendant further answering states that more than five years have elapsed since the taxes for the years 1891 to 1903 inclusive became due and payable to complainant, if any were due or payable, and more than five years have elapsed since any right of assessment for or certification or collection of taxes for the aforesaid years accrued to complainant, if any such right ever did accrue, and the defendant pleads and relies upon the Statute of Limitations in such cases made and provided.

Par. 9. The defendant further answering states that by §1 of the act entitled "An Act to amend the charter of the Quick's Run and Ohio River Turnpike Road Company," Chapter 143, Acts of 1889, 1890, section one of the original act entitled "An act to incorporate the Quick's Run & Ohio River Turnpike Road Company, Chapter 1070, Acts of 1887-1888 was repealed and in lieu thereof the following words were substituted therefor, to-wit: "Thence down the Quick's Run Valley, the most practicable route to the mouth of Martin's Fork of said Quick's Run; thence the most practical route to either Carr's or Stout's Landing as the board of directors may select. The said road company is hereby authorized to extend their road from the mouth of Martin's Fork; thence down the Quick Run Valley to the Ohio River Road; thence the most practical route to the city of Vanceburg; and all the provisions and conditions as set forth in Section seven and then, shall be alike applicable to said branch road when the same is put under contract or any part thereof as provided in Section seven' " and that by reason of said repeal and substitution, the existence of the



said Quick's Run & Ohio River Turnpike Road Company as a corporation was destroyed and put an end to and thereafter it had no right to build said road or collect or have collected for its benefit said tax or any part thereof.

Wherefore having fully answered the defendant prays that it may be hence dismissed.

(Signed)                      WORTHINGTON, COCHRAN & BROWNING,  
*Atty's for Defendants.*

### THE REPLY.

Now comes the complainant and for reply to the answer of defendant to paragraph 4 of the answer, denies that the complainant has, by reason of the negligence, carelessness, or slothfulness of itself or of its officers, failed to collect any taxes upon any other property situated in its taxing district except for the years 96, 97, 98 and 99, and it denies that by reason of its own carelessness it has made it impossible to collect any taxes off of said property prior to the year 1904, and it denies that it would be unjust, inequitable, or contrary to law to subject this defendant to the burden of taxation not borne by the other property holders of this district or to which they can not now be subjected, and it denies that it is doing so.

Par. 2. Complainant for reply to paragraph 5 of the answer denies that the Complainant has collected much or any more than is necessary to enable it to complete the turnpike described in the complaint, or that it has collected more than enough to build the amount of turnpike described in the complaint.

Par. 3. The Complainant in reply to paragraph 8, denies that more than five years have elapsed since the taxes for the years 1891 to 1903 became due and payable to complainant and more than five years have elapsed since any right of assessment or certification or collection of taxes for the aforesaid years accrued to complainant, and it denies that the defendant has any right to plead or rely upon the Statute of Limitations.

Par. 4. And for further reply to all of the paragraphs of the answer herein, the Complainant says that the Defendant herein, and its predecessors, as soon as Complainant organized the Company for the purpose of building the road, together with some of her tax-payers in said district, brought a suit in Equity in the Lewis Circuit Court

enjoining complainant herein from attempting to collect any taxes or attempting to build its turnpike road. That the injunction against this company for the purpose of enjoining it from collecting was issued by the Clerk of the Lewis Circuit Court and duly executed on the said company, and they were enjoined and restrained from collecting the taxes levied by the Legislature on the district described in the charter. And said defendant and its predecessors, the Maysville & Big Sandy Railroad Company, refused to pay any taxes and have refused to do so to the present time, and said injunction remained in force, and said litigation, although diligently defended by the attorney, was prosecuted by this defendant and its associates until February 28, 1895, when it was decided finally by the Court of Appeals that this company had a right to collect the said taxes, and that the Legislature had the right to levy and impose the said tax. Said case is the case of Bierly et al., vs. Quick's Run & Ohio River Turnpike Company, and is referred to and made part thereof and is reported in Vol. 17 Kentucky Law Reporter, page 36, and said suit and the papers are in the Lewis Circuit Court and are referred to and made part thereof and copies of them are, as complainant is informed, in the possession of the defendant. Now, the complainant pleads and relies on the decision of the courts in the case of Bierly et al. vs. Quick's Run & Ohio River Turnpike Company as an estoppel against the defendant in making any claim for any cause against the payment of the taxes which the complaint is claiming, and that said judgment is a bar to any defense that has been made in this proceeding.

Par. 5. For further reply the complainant says that Sec. 4096 of the Kentucky Statutes provides as follows:

"That the president or chief officer of each railroad company, or other corporation owning or operating a railroad lying in whole or in part in this State, shall, on or before the 1st of September in each year, return to the Auditor of Public Accounts of the State, under oath, the total length of such railroad, including the length thereof beyond the limits of the State, and designating its length within this State, and in each county, city, incorporated town and taxing district therein, together with the average value per mile thereof, and in the respective counties, cities, incorporated towns and taxing district therein, together with the average value per mile thereof, for the purpose of being operated as a carrier of freight and passengers, including engines and cars, and a

list of the depot grounds and improvements, and other real estate of the said company and the value thereof, and the respective counties, cities and incorporated towns in which the same are located."

And the complainant says that the officers of the defendant herein and their predecessors, and that the president and each officer wholly failed to comply with said law, and have never returned under oath, or in any way, the length of said railroad in the taxing district of the Quick's Run & Ohio River Turnpike Company, but have wilfully and criminally refused to do so, and by said failure and refusal it has caused all the delay and prevented the said complainant company from collecting any of the taxes from the railroad company, and complainant sets up said facts and conduct of the defendant herein as an estoppel and a bar to any defense set up by it to the payment of the taxes which are past due.

Par. 6. Complainant says that by reason of the injunction and the long continuance of the litigation they were continually engaged in, with the defendant and its associates, they did not file with the Secretary of State an acceptance of the provisions of the Constitution at that time, but it has since that time filed in the office of the Secretary of State an acceptance of the provisions of this Constitution, and that since the adoption of the Constitution the Court of Appeals has decided that the levy of the taxes by the Legislature is perfectly valid as stated in said case of Bierly above mentioned.

Par. 7. The Complainant for further reply herein to all of the defenses of the defendant says that those alleged defenses are not proper, nor should they be considered by this Board as they are matters of defense, if any they have, in the action which has been pending in the Lewis Circuit Court, entitled "THE COMMONWEALTH OF KENTUCKY for the use of M. BERTRAM, etc. vs. THE MAYSVILLE & BIG SANDY RAILROAD CO. AND THE CHESAPEAKE & OHIO RAILWAY COMPANY in the Lewis Circuit Court for the collection of said taxes, and said suit and the papers therein are referred to and made part thereof, and said suit has been delayed on account of the failure of the railroad company and its officers to furnish the Auditor and the Railroad Commissioner with the length of the railroad in the said taxing district, and this application is made in pursuance of the statute made for said case,

Sec. 4097, Kentucky Statutes. And complainant claims and sets out that the pendency of the said action and the failure of the railroad to furnish said information as required by the Statutes under penalties, estops it and bars it from any defense that it has yet produced.

Par. 8. The complainant states that there is one mile and a half of the said railroad lying in complainant's district outside of the part of the said district which was allotted by the Lewis County Fiscal Court to the Vanceburg & Stout's Lane Turnpike Company, and the complainant claims that even if the Commission should decide that the Quick's Run & Ohio River Turnpike Company is not entitled to have the back taxes prior to that division by the Fiscal Court, still it is entitled in this proceeding to the taxes for that extra one mile and a half for the entire time claimed, and complainant further claims that Sec. 4736 of the Kentucky Statutes, cited by defendant in its Paragraph No. 2, can not, by the proper construction of the law and the Constitution, take effect as *ex post facto* and destroy the vested right of the Quick's Run & Ohio River Turnpike Company, which got its right by the previous Charter and the taxes were levied, not by the officers, but by the Legislative body itself, and if the defendant herein had paid its taxes, as the law required it to do, the allotment to the Vanceburg & Stout's Lane Turnpike Company would never have been construed to have an *ex post facto* power, and complainant claims that it does not have. And complainant prays as in its petition.

THOS. R. PHISTER,

R. D. WILSON,

*For Complainant.*

#### OPINION AND ORDER.

The complainant, Quick's Run and Ohio River Turnpike Road Company, a corporation created by the Legislature of Kentucky by Chapter 1070, Acts 1887-1888, and Chapter 143, Acts 1889-1890, having heretofore filed its application herein for an apportionment by this Commission and a certification thereof, of taxes for its benefit upon defendant's line of railway for the years 1891 to 1907 inclusive, and the objection of the Chesapeake and Ohio Railway Company having been filed to said application, and both parties having been duly heard, the Commission finds upon proof duly filed before it, as follows:

That the complainant was authorized by express charter authority,

to collect taxes upon property situated in its taxing district, the constitutionality of which delegation of authority has been sustained by the court of Appeals of Kentucky in the case of BIERLY ET AL. VS. QUICK'S RUN & OHIO RIVER TURNPIKE ROAD COMPANY, 17 REP. 36. That defendant's line of railway passes through complainant's taxing district for a distance of 4 9-16 miles. We further find, however, that all but  $1\frac{1}{2}$  miles of said distance of 4 9-16 miles also lies within the taxing district of the Vanceburg and Stouts Lane Turnpike Road Company, and that the Lewis Fiscal Court had, under and pursuant to the provisions of section 4736, Kentucky Statutes, decided that said Vanceburg and Stouts Lane Turnpike Road Company is of more benefit to the defendant than is the turnpike of the complainant, and accordingly released defendant from all liability to complainant for taxes upon so much of its right of way as was also situated within the taxing district of the said Vanceburg and Stouts Lane Turnpike Road Company, and that defendant has for all of the years involved paid taxes to said Vanceburg and Stouts Lane Turnpike Road Company for such part of its railroad. It is our opinion, therefore, that by reason of the provisions of section 4736, and the aforesaid action of the Lewis Fiscal Court, the defendant is liable to the complainant for taxes upon its railroad for only  $1\frac{1}{2}$  mile thereof. It is accordingly ordered that an apportionment of taxes for the benefit of complainant be made upon the  $1\frac{1}{2}$  miles of defendant's line of railway for the years 1891 to 1897 inclusive, and that the amounts so apportioned for the respective years as hereinafter set out, be certified to the Auditor of Public Accounts, with the request that he forthwith certify the same to the Clerk of the Lewis County Court, or other proper official, and that the Secretary of this Commission certify this order to the said Auditor of Public Accounts and to the defendant.

This Commission is further of the opinion that complainant is not entitled to recover any taxes of defendant for any year subsequent to 1897. While complainant's charter gives it the power of taxation, that power is of a special nature and one that complainant, or any other private corporation, cannot now obtain under the corporation laws of this State. Section 573, Kentucky Statutes, enacted by the Legislature of 1891-2-3) provides, among other things, that

"The provisions of all charters and articles of incorporation,

whether granted by special act of the General Assembly or obtained under any general incorporation law, which are inconsistent with the provisions of this chapter concerning similar corporations, to the extent of such conflict, and all powers, privileges or immunities of any such corporation which could not be obtained under the provisions of this chapter, shall stand repealed on September 28, 1897."

It is evident that this statute was designed to, and did, destroy just such special privileges or powers as complainant seeks to exercise, and that is the purpose and intent of the Statute as recognized by the Court of Appeals in *SENN VS. LEVY*, 111 KY. and *WILLIAMS VS. NOLLE* 108 KY. 21. It is our opinion, therefore, that by virtue of the provisions of section 573, Kentucky Statutes, defendant was, after the 28th day of September, 1897, divested of its charter power of taxation. Complainant's application for an apportionment of taxes for the years 1898 to 1907 inclusive, is accordingly overruled.

It further appears that there is no liability upon the part of the defendant for any taxes for the years 1903 and 1906, for the reason that no assessment was made for either of said years as against the other property situated in complainant's taxing district. Such being the case defendant cannot be compelled to pay for either of said years under the rule laid down by the Court of Appeals in the case of *VANCEBURG & STOUT'S LANE TURNPIKE ROAD COMPANY VS. MAYSVILLE & BIG SANDY R. CO.*, 25 REP. 1404.

The apportionment is made as follows, to-wit:

1891.

LEWIS COUNTY: Quick's Run and Ohio River Turnpike taxing district:

1½ miles @ \$27,000 per mile-----\$40,500.

1892.

LEWIS COUNTY: Quick's Run and Ohio River Turnpike taxing district:

1½ mile @ \$21,000 per mile-----\$31,500.

1893.

LEWIS COUNTY: Quick's Run and Ohio River Turnpike taxing district:

1½ mile @ \$21,000 per mile-----\$31,500.

1894.

LEWIS COUNTY: Quick's Run and Ohio River Turnpike  
taxing district:

1½ mile @ \$21,000 per mile-----\$31,500.

1895.

LEWIS COUNTY: Quick's Run and Ohio River Turnpike  
taxing district:

1½ mile @ \$21,000 per mile-----\$31,500.

1896.

LEWIS COUNTY: Quick's Run and Ohio River Turnpike  
taxing district:

1½ miles @ \$20,500 per mile-----\$30,750.

1897.

LEWIS COUNTY: Quick's Run and Ohio River Turnpike  
taxing district:

1½ miles @ \$20,250 per mile-----\$30,375.

CITIZENS OF BELL COUNTY,-----*Complainants*  
*vs.*

STRAIGHT CREEK COAL & COKE CO., AND

L. & N. RAILROAD CO.,-----*Respondents*  
McCHORD, HINES AND NORMAN,

*Attorneys for Straight Creek Coal & Coke Co.*

WM. G. DEARING, C. W. METCALF AND H. C. McLELLAN,

*Attorneys for L. & N. Railroad Co.*

(Pending.)

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Important Letters, Circulars and Publica-  
tions in Connection with the Work  
of the Commission  
1908

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## IMPORTANT LETTERS, CIRCULARS AND PUBLICATIONS IN CONNECTION WITH THE WORK OF THE COMMISSION

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Frankfort, Ky., February 5, 1908.

TO THE RAILROAD COMMISSION,  
Frankfort, Kentucky.

GENTLEMEN :—In obedience to the request of quite a large number of our best colored citizens for relief from the unjust treatment of them by the Railroad Companies, we have examined the General Statutes to see if an amendment to the existing separate coach law was necessary in order that the railroads might be compelled to furnish them with decent accommodation. We find that by Section 795, 796 and 797 of the General Statutes the railroads are forbidden to discriminate against colored passengers and shall make no difference or discrimination in the quality, convenience or accommodations in the cars or coaches, etc. That the railroad companies have made and do make a difference in the quality, convenience and accommodations in the cars, is evident to everyone who travels upon the several railroad lines in this State.

Only one compartment in a car or train of cars is provided for colored passengers and into that one compartment all classes and both sexes are compelled to go. It is not so with white passengers. A compartment is provided for men who desire to smoke, another car is provided for men who do not desire to smoke, and another car is provided for females with or without male escorts.

Now is there any reason why the companies should not provide compartments for colored passengers—one for men and another for females with or without male escorts. There are very many respectable, well to do colored females who object to being herded into one compartment with all classes and conditions of colored men. This is neither right nor just, and we submit this to you with the earnest

request that you take this matter up at the very earliest date, with the railroad companies and compel them to cease this discrimination.

If in your opinion the present law does not give you the necessary power to correct the abuses complained of, we shall thank you to submit to us such amendments as you think necessary and we shall use our best endeavors to have them enacted into laws.

Respectfully,

NAT. C. CURETON,

*Senator 37th District.*

R. L. GWATHMEY,

*Representative 44th District.*

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February 7, 1908.

NAT C. CURETON, *Senator 37th Dist.,*

R. L. GWATHMEY, *Representative 44th Dist.,*

Frankfort, Kentucky.

GENTLEMEN:—I am in receipt of your letter of recent date complaining of the treatment to colored passengers by the various railroads of this State, and also inquiring of me whether or not I thought that the General Statutes, Sections 795, 796 and 797 were sufficient to reach discrimination against colored passengers riding on passenger trains, and in response to same will say that I think that the courts have ample power under sections 795, 796 and 797 to punish each railroad company that fails to provide as good accommodations for colored passengers as they do for white passengers. If you will furnish me the names of some of the witnesses and the counties in which they live, I will write the Commonwealth's Attorney, and also the County Attorney, advising them to take such witnesses before the Grand Jury of their county in order to procure an indictment and punish such roads as fail to make the accommodations equal for the colored passengers with the accommodations which are furnished white passengers. I recognize the fact that our court officers have not enforced these sections of the Statutes, and I shall use my best efforts to get the court officers to enforce them in the future.

Yours truly,

(Signed) A. T. SILER,

*Chairman R. R. Commission.*

Feb. 19, 1908.

B. M. STARKS,  
*General Manager,*  
Louisville, Ky.

DEAR SIR:

Relative to depot at Pleasant View, Kentucky. The people in and around this community are very much in need of a depot. Will you please take such steps as are necessary to rebuild said depot.

Yours truly,

(Signed) A. T. SILER,  
*Chairman R. R. Commission.*

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February 20, 1908.

HON. A. T. SILER,  
*Chairman Railroad Commission,*  
Frankfort, Kentucky.

DEAR SIR:—I have your communication of February 19th, relative to the destruction of depot at Pleasant View, Kentucky. The matter is receiving attention.

Yours truly,

(Signed) B. M. STARKS,  
*General Manager.*

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Feb. 26, 1908.

MR. A. T. SILER,  
*Chairman Kentucky Railway Commission,*  
Frankfort, Kentucky.

DEAR SIR:—Will you kindly send me a copy of the Commission's rulings relative to the ratio between lumber and log rates, and any other rulings bearing on the rate situation? We may wish to revise our tariff in the near future, and of course desire to comply with the necessary requirements.

Yours very truly,

(Signed) KENTUCKY & TENNESSEE RAILWAY.

*By C. P. Bissell.*

March 2, 1908.

MR. C. P. BISSELL,  
Stearns, Kentucky.

DEAR SIR:—Answering your letter of recent date will say that under the rules of the Kentucky Railroad Commission you are only allowed to charge 70 per cent of the lumber rate for hauling logs; in other words, if your rate between two points is \$1.00 per ton on lumber, it would be 70c. per ton on logs.

Yours truly,

(Signed) A. T. SILER,  
*Chairman R. R. Commission.*

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September 22, 1908.

HON. A. T. SILER,  
*Chairman Railroad Commission,*  
Frankfort, Kentucky.

MY DEAR MR. SILER:—You will doubtless remember that sometime since I mentioned to you the case of the Caney, Piedmont & Morehead R. R. Co., by way of inquiry as to whether your commission takes cognizance of such cases.

The facts about the matter are that this railroad, about 3 1-2 miles in length, was constructed by the Caney & West Liberty Railroad Company, which went into the hands of a Receiver, and the property was sold and afterwards acquired by the Caney, Piedmont & Morehead Company, and was by the last named Company operated for a short time; but along in December, 1907, they ceased to operate and have done nothing since; the engine has been sold and shipped away, the track has fallen into worthless condition, the trestles have washed away and no attempt made to replace them. The remnant of a railroad that is left is merely an obstruction in the way of building another, and yet it is occupying a right of way through my client's farm and in front of his coal banks, and instead of his deriving benefit from it as a common carrier, it prevents him from getting out his coal.

It seems to me that the charter should be revoked. I do not know what proceedings your Commission is authorized to take in the premises, but I should think, in any event, it would have the authority

to rule the company to repair its tracks and operate freight trains as a common carrier within a given time, and that failing in that you could authorize a proceeding to revoke the charter of the Company.

You will remember that you promised to investigate the matter some, and I am laying this before you as a basis for your consideration, and will be glad to have your advice.

Mr. John J. Watson, of Caney, Kentucky, is the person making the complaint.

Yours truly,  
(Signed) FINLEY E. FOGG,

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Williamsburg, Ky., Oct. 2, 1908.

MR. FINLEY E. FOGG,  
West Liberty, Ky.

DEAR SIR:—I am in receipt of your letter of September 22d, relative to the Caney, Piedmont & Morehead R. R. Co. I think under the state of facts which you mention that the charter of this Railroad Company should be forfeited. I think under section 569 of the Kentucky Statutes an action should be brought to forfeit and revoke the charter. I think in this petition of equity which should be filed that you should ask the court to declare title to the lands over which the road passes forfeited and adjudge the title to said lands to be in the original owners of same. If you desire the Commission to do so we will request the Attorney General to give you authority to bring this suit. Let me know what your pleasure is in the matter and I will endeavor to comply with your wishes.

Yours truly,  
(Signed) A. T. SILER,  
*Chairman.*

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West Liberty, Ky., Feb. 5, 1909.

HON. A. T. SILER,  
*Chairman Railroad Commission,*  
Frankfort, Ky.

DEAR SIR:—You will recall your conversation with reference to the Caney, Piedmont & Morehead Railroad, which has suspended operations for many months, and your suggestion that you would direct the Attorney General to authorize action to vacate its charter. In

that connection, I am enclosing you herewith the affidavits of Mr. J. J. Watson, D. K. Day and J. B. Howard, setting forth the facts, and which I will be glad to have you transmit to the Attorney General, together with your recommendation that he authorize such proceedings.

With assurances of continued regard, I am,

Very truly yours,

(Signed) FINLEY FOGG,

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Williamsburg, Ky., Feb. 15, 1909.

MR. FINLEY E. FOGG,

West Liberty, Ky.

DEAR SIR:—Please find enclosed copy of letter which I have just written James Breathitt, Attorney General, recommending that he authorize you to institute such proceedings as may be proper and necessary to forfeit and revoke the charter, powers, franchise and privileges of the Caney, Piedmont & Morehead Railroad Company. You will, doubtless, hear from the Attorney General.

Yours truly,

(Signed) A. T. SILER,

Chairman.

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Williamsburg, Ky., Feb. 15, 1909.

HON. JAMES BREATHITT,

Attorney General,

Frankfort, Ky.

DEAR SIR:—Please find enclosed affidavit of A. K. Day, J. J. Watson and J. B. Howard, stating that the "Caney, Piedmont & Morehead Railroad" has not been operated for more than 12 months; that it has no rolling stock; that its engine was sold and removed from its line about the 23d day of December, 1907; that the track has fallen into dis-repair; that the trestles have washed away and never been repaired, and that the said track has been abandoned and is an obstruction and of no benefit to anybody. These people desire that the State should institute such proceedings as may be proper and necessary to forfeit and revoke the charter, powers, franchise and privileges of this corporation. Their attorney is Mr. Finley E. Fogg, of West Liberty, Kentucky, and he desires authority from you as At-

torney General for the State to institute such proceedings as are necessary in the premises, under Section 569 of the Kentucky Statutes. The Railroad Commission has made a casual investigation of the facts as to this railroad abandoning business, and is of the opinion that its charter, powers, franchise and privileges should be forfeited and revoked. We, therefore, recommend that you vest Mr. Finley E. Fogg, attorney, at West Liberty, Kentucky, with authority to institute such proceedings in the Morgan Circuit Court as are necessary to attain this end, provided, of course, that the State shall bear none of the expense.

Yours truly,

(Signed) A. T. SILER,

*Chairman.*

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February 20, 1909.

HON. FINLEY E. FOGG,  
West Liberty, Ky.

DEAR SIR:—I have before me a letter of date February 15, 1909, from Hon. A. T. Siler, Railroad Commissioner, accompanied by affidavits of Watson, Day and Howard, all of which go to show that the "Caney, Piedmont & Morehead Railroad" has practically been abandoned, and the letter of Siler suggesting that I give you authority to use the name of the Commonwealth of Kentucky, in the institution of such a suit as may be necessary to revoke, forfeit or annul the charter of said Company, with the express understanding and condition that the Commonwealth is not to be bound in any way for either costs of the proceeding or attorney fees.

Upon these conditions you are therefore authorized to use the name of the Commonwealth in such a proceeding.

Respectfully,

(Signed) JAMES BREATHITT,

*Attorney General.*

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Frankfort, Ky., Feb. 20, 1909.

HON. A. T. SILER,  
Williamsburg, Ky.

DEAR SIR:—In response to yours of recent date, relative to suit to forfeit charter of the C. P. & M. R. R., will say that I herewith en-



close copy of letter this day sent to Hon. Finley Fogg, authorizing the use of the Commonwealth's name to bring the suit.

Respectfully,

(Signed) JAMES BREATHITT,  
*Attorney General.*

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West Liberty, Ky., February 23, 1909.

HON. A. T. SILER,  
*Chairman Railroad Commission,*  
Frankfort, Kentucky.

DEAR MR. SILER:—I have your favor of the 15th enclosing copy of your letter to the Attorney General, I also have an authorization from him to enter suit against the Caney, Piedmont & Morehead R. R. Co.

I thank you for your attention to this matter, and am,

Yours very truly,

(Signed) FINLEY E. FOGG,

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Roanoke, Va., Nov. 16, 1908.

MR. A. T. SILER,  
*Kentucky Railroad Commission,*  
Williamsburg, Ky.

DEAR SIR:—I have your letter of the 14th, suggesting personal conference in relation to our Annual Report to the Commission.

I will arrange to leave here on Wednesday next and call on you at Williamsburg on Thursday morning, my idea being to return to Knoxville in the afternoon so as to arrive here the following day.

Yours truly,

(Signed) JOS. W. COXE,  
*Comptroller.*

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Williamsburg, Ky., Nov. 14, 1908.

MR. JOSEPH W. COXE,  
Roanoke, Va.

DEAR SIR:—Your letter of November 10th addressed to Secretary Cornett has been referred to me for consideration, decision and answer.

You request our consent to allow you in your statistics to ignore

this .29 mile at Hatfield Bend as being in Kentucky, and to confine your statistics furnished to the State to the traffic which originates or terminates on the Freeburn Branch, such allowance on our part not effecting the assessment of this .29 mile in Kentucky in any way for this year or any other time.

In as much as I do not quite understand what you desire, and I think we could arrive at a better result for you and the State by a personal conference with you or your representative, I will, therefore, request that you either come to see me at Williamsburg, or send your representative. You can see me here any day next week, except Tuesday or Wednesday.

Yours truly,

(Signed) A. T. SILER,

Chairman.

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*From the Louisville Evening Post, November 24, 1908, relative to order entered by the Commission in the case of Louisville Board of Trade against all railroads in Kentucky.*

#### "HEAVY BURDEN IS REMOVED.

By an order promulgated today the Kentucky Railroad Commission gives to the railroads doing business in the State the right to ignore the clause of the Kentucky Constitution relating to long and short haul rates, commonly known as the "long and short haul clause," and to charge rates based on what is technically known as the "lowest combination" basis. This will mean an almost unlimited increase in the business of the city and the return of an enormous amount of business lost to the merchants of Louisville and Kentucky generally through the operation of the law. The law has been in effect since July 23, 1899, and since then has cost the merchants of the State of Kentucky many hundred thousand dollars.

The order issued today followed a hearing given by the Kentucky Railroad Commission at the Galt House on the appeal of the Louisville Board of Trade, and it will become effective immediately. The Board of Trade was represented by the law firm of McChord, Hines and Norman. The following petition was filed:

## BOARD OF TRADE'S PETITION.

"The Louisville Board of Trade respectfully represents to your honorable commission that the action of your commission in heretofore exempting certain places in Kentucky, known as common points, from the operation of the long and short haul clause as embodied in Section 218 of the Kentucky Constitution and Section 820 of the Kentucky Statutes has not prevented said law from seriously crippling the commercial and industrial interests of the State of Kentucky, and that in order to give full relief to those interests it is necessary that every point in the State should, in the making of rates, have the benefit of its proximity to the nearest common point.

The plaintiff further represents that the fact that it has been unlawful for the railroads of Kentucky to be governed by that principle in the making of rates has caused the long and short haul law to operate as a discrimination against the business interests of Louisville and of the State of Kentucky in favor of the business interests of other States and especially of the cities of other States just beyond the Kentucky border and has caused a loss of many hundreds of thousands of dollars annually to the merchants, producers and manufacturers of the State of Kentucky. Wherefore, the plaintiff prays that your honorable commission so far relieve the railroads from the operation of said long and short haul law as to authorize them to make rates based upon the "lowest combination."

Judge Hines presented the case of the Board of Trade, pointing out the discrimination the railroads doing business in Kentucky, were forced by the laws of the State to impose on the merchants, manufacturers and shippers, generally.

## MR. COMPTON TESTIFIES.

In response to the request for some definite data bearing out this alleged discrimination, Judge Hines introduced Mr. C. B. Compton, traffic manager of the Louisville & Nashville Railroad Company. Mr. Compton made a general statement in which he said that the Louisville & Nashville Railroad Company, as well as all of the other railroads doing business in Kentucky, would willingly conform their rates to the "lowest combination" basis if allowed by the Kentucky law. He also asserted that throughout the South this system of freight

charges prevails. In his testimony, Mr. Compton showed that Louisville shippers are compelled in many instances to pay higher freight rates to Kentucky points than are merchants and shippers in Cincinnati, St. Louis, Indianapolis, Chicago, Nashville and Memphis. In some instances, he said this amounts to more than 100 per cent. A case in point was cited.

Shipments of first-class freight from Cincinnati to Robards, Ky., a station on the Louisville, Henderson & St. Louis lines near Henderson, Ky., get a rate of 55 cents; from St. Louis to Robards, 52 cents; and from Louisville to Robards, 56 cents. It was shown that the rate from Louisville, although a great many miles nearer than either St. Louis or Cincinnati, was from 1 to 4 cents higher. It was pointed out that on the "lowest combination" basis the rate from Louisville to Robards would be 43 cents, or 9 cents cheaper than the rate from St. Louis.

While the matter was not brought out of the testimony, it is said that from ten to twelve cars of freight weekly are sent to New Albany and billed from there to Kentucky points in order to get the benefit of the "lowest combination" basis, which interstate railroads are allowed by the Interstate Commerce Commission to make.

#### AGENCY IN CINCINNATI.

Another fact that was not brought out was that one large shipper in Louisville has an agent stationed in Cincinnati, to whom are sent many car loads of freight annually and rebilled with the Ohio bill of lading back into Kentucky. All of this business in future will be done out of Louisville.

The law, which is waived by the order of the Kentucky Commission today, became effective in 1899, and since then repeated efforts have been made by the shippers here to get relief, but the matter was never properly presented to the Railroad Commission. In 1899 an effort was made to secure the nullification of the law, but was rewarded with only partial success, the commission granting the exemption of a few common points in the State. Common points are such points as are touched by a railroad and a river, or by two or more railroads. Now, however, all points in the State will be open to the rates based on the "lowest combination."

Among those present were: J. F. Downing, William A. Robin-

son, Edward Babbit, E. H. Bower, Marion E. Taylor, Jas. F. Buckner, Jr., William Heyburn, J. W. Price, George G. Fetter, C. B. Compton, C. C. Mengel, C. C. McChord, Judge Dearing, Morris B. Belknap, W. R. Belknap and Thomas Smith.

#### "COMPLAINT FROM DANVILLE PEOPLE.

The directors of the Board of Trade had before them again today complaints filed with the board by the business people of Danville, Ky., complaining of the very bad service between Danville and Louisville. The complainants assert that the Southern Railway has taken off the through trains between Louisville and Danville, and that the only morning train from Danville to Louisville now leaves Danville at 5:30 a. m. for Lawrenceburg, where a change has to be made to the Lexington train. The train that formerly left Danville for Louisville, at 8 a. m., has been taken off entirely. The complaint states that by reason of this imperfect service, much trade which would come to Louisville has been diverted to Cincinnati.

After the complaint had been discussed by the directors, it was referred to the Transportation Committee for thorough investigation, and with instructions to report back to the Board of Directors.

#### "REJOICE OVER NEW ORDER.

After the transaction of a good deal of routine business, the remainder of the session was given up by the directors to congratulations, etc., in regard to the success of the Board of Trade at the hearing before the Railroad Commission yesterday, the result of this hearing being the granting by the Railroad Commission of the full relief asked for by the Board of Trade.

The directors had before them Attorney E. W. Hines' copy of the order of the Railroad Commission granting the relief asked. As the action of the Railroad Commission is as valuable to the business people of the various towns of the State as it is to Louisville, the board directed that it be brought to the various commercial organizations throughout the whole State, and that communications be sent to these organizations pointing out the benefits that will come to the different localities from the relief from unfair rates as granted by the new order of the Railroad Commission.

The copy of the order of the Railroad Commission follows:

"The Commission having heard the application of the Louisville Board of Trade for an order relieving the railroads of Kentucky from the operation of the long and short haul law to the extent of permitting them to make rates based on the lowest combination, and having fully investigated the same, does hereby relieve the railroads of Kentucky from the operation of said law as embraced in Section 218 of the Kentucky Constitution and Section 820 of the Kentucky Statutes, to the extent of permitting said companies to make rates based on the lowest combination in all cases in which such lowest combination would give a lower rate than that which would otherwise apply."

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*From the Louisville Courier-Journal, November 25, 1908, relative to order entered by the Commission in the case of Louisville Board of Trade against railroads in Kentucky.*

#### "MEANS BIG GAINS TO ALL SHIPPERS.

The Kentucky Railroad Commission yesterday, after hearing but one witness for the Board of Trade in its efforts to secure better freight tariffs for Kentucky shippers to points in Kentucky, agreed to exempt every shipping point in the State from the long and short haul clause in the Kentucky Statutes. This final action has been wanted by merchants of Louisville and in Kentucky for ten years. The Board of Trade has opposed the making of rates to Kentucky points under the clause in question for nearly ten years and has urged upon the Commission at every opportunity that the business interests of Louisville and the State are being discriminated against. The ending of the controversy came yesterday, however, and it is estimated that the reverting back to the old basis eradicated in 1899 will net local shippers an annual saving of \$500,000, not including shippers out in the State.

The session at which the abolishment of the long and short haul clause was accomplished was held at the Galt House yesterday morning from 10 o'clock till 12:30 in the afternoon. The Board of Trade's complaint was immediately presented by E. W. Hines.

## LOUISVILLE SUFFERED HEAVILY.

Mr. Hines, in summing up the present rate system under the long and short haul clause, startled the members of the commission by saying that the losses merchants and manufacturers of Louisville have suffered under the provisions of the clause cannot be calculated, and that Louisville's chances to regain the ground she has lost commercially to outside cities are very doubtful.

Mr. Hines then produced and spoke at length upon a scale of rates now in effect, against which the Board of Trade made its long fight. They showed that Cincinnati, Evansville, Nashville, Chattanooga, Knoxville and St. Louis have had cheaper freight rates to Kentucky points than Louisville and that these cities have been taking advantage of the Kentucky metropolis for nearly ten years.

Immediately after concluding, Mr. Hines retired for a moment and the two members of the Commission who were present announced that they were convinced of the flaws in the present system, but requested that further evidence be submitted. C. B. Compton, the freight traffic manager of the Louisville & Nashville Railroad, was then requested by the board to testify.

## RAILROAD MAN'S TESTIMONY.

Mr. Compton removed all doubt, if any existed, that rates to intermediate and common points in Kentucky from Louisville were anything but fair. He was questioned by the members of the Commission and Mr. Hines for nearly an hour. Releasing Mr. Compton, McD. Ferguson and A. T. Siler, the two commissioners, conferred on the proposition for a brief space and then announced their willingness to subject the whole of Kentucky to the proposed change to become effective at once.

The conference was attended by a large number of local shippers and railroad men interested in the outcome. Many comments were made on the decision given by the Commission, all of which, however, were in favor of the elimination of the obnoxious clause in the statutes.

J. F. Buckner, Jr., the superintendent of the Board of Trade, said after the conference that Louisville merchants alone will be saved half a million dollars annually under the old rating system, which will reduce the present tariffs from 12 to 105 per cent, between dis-

tributing and local consuming points in Kentucky. He expressed satisfaction that the Board of Trade has finally succeeded in winning its long and wearing contest to place Louisville and the State in their natural position.

From the shipper's point of view the sums of the money that will be saved for merchants of Louisville under the ruling cannot be calculated according to John Downing, of Belknap & Co. Mr. Downing is probably one of the best posted authorities on freight traffic in the country and his opinion is worth much on the question decided yesterday.

He said:

#### LOUISVILLE CAN COMPETE NOW.

"It was a fair, equitable and just decision. I cannot see how anyone could ever have been in favor of the long and short haul clause. It has harmed Louisville and shipping points in Kentucky to an extent that will be hard to determine if any attempt it. I should say that the new ruling will save hundreds of thousands for shippers hereabouts annually."

Another well known authority on freight rates is Clarence Watkins, the traffic manager of the Peaslee-Gaulbert Company. Mr. Watkins attended the meeting and afterwards said that merchants and shippers in Louisville have reason to feel gratified at the abolishment of the long and short haul clause.

"Louisville will now," he said, "be in a position to meet her competitors on equal ground. It is too bad that the Commission could not see its way clear years ago to abolish this clause, but it comes better late than never."

Mr. Watkins said in conclusion that on account of the rates imposed on Louisville under the clause just abolished a large firm here was forced, a few years ago, to withdraw their representatives from Eastern Kentucky, it being absolutely impossible for the company to compete with Cincinnati and get an even break.

Prominent among those at the conference, including principals and spectators, were: James F. Buckner, Jr., Board of Trade; E. W. Hines, attorney representing Board of Trade; McD. Ferguson and A. T. Siler, members of the Kentucky Railroad Commission; J. J. Tel-



ford, F. C. Nunemacher and William E. Heyburn, Board of Trade; Clarence Watkins, John Downing, J. W. Price, Attila Cox, Jr., E. H. Bowen, George G. Fetter, R. A. Robinson, C. C. McChord, William Smith, Jr., and C. B. Compton. Commissioner Tarlton was unable to attend the conference on account of illness."

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Versailles, Ky., Dec. 16, 1908.

MR. A. T. SILER,

*Chairman Kentucky Railroad Commission,*  
Williamsburg, Ky.

DEAR SIR:—The Kentucky Northern Railroad is a standard guage line seven and two-tenths miles long running from Kentucky Northern Junction on the Louisville & Atlantic Railroad, in Estill county Ky., to Simcoe, in Lee county, Ky. As this road has not been making enough to pay operating expenses and is entirely dependent upon timber products for its earnings, no coal mines being on it, the owners decided to sell it for scrap and let it be taken up. Some other parties and myself have purchased the road and think that by making a narrow gauge of it, we can keep it in existence for a year or two by making a decided increase in rates. We will be in possession of the road on the first of January, 1909, and now ask your permission to let us change the gauge as soon afterward as possible. As this road will, in the future, transfer all freight, both inbound and outbound, and will not participate in rates or billing over other lines, will it be necessary to ask permission of the Interstate Commerce Commission to cancel all published tariffs now in effect in less than thirty days notice? As you can get this information from them promptly, would you object to writing them an explanation of the matter and getting an answer for me?

Very truly yours,

(Signed) R. N. HUDSON.

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Williamsburg, Ky., Dec. 17, 1908.

R. N. HUDSON, Gen. Mgr.,  
Versailles, Ky.

DEAR SIR:—In answer to your request of December 16th, that you now have my permission to change the gauge of the Kentucky Northern Railroad from a standard gauge to a narrow gauge, under the conditions and facts mentioned in your letter of December 16, 1908,

and addressed me as Chairman of the Railroad Commission. You are advised that I am now writing the Interstate Commerce Commission for their advice relative to cancellation of all published tariffs now in effect by the Kentucky Northern Railroad Company. When I will have heard from them I will advise you further.

Yours truly,

(Signed) A. T. SILER,  
*Chairman.*

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Williamsburg, Ky., Dec. 17, 1908.

MR. E. A. MOSELY,

*Secy. Interstate Commerce Commission,*  
Washington, D. C.

DEAR SIR:—I enclose you copy of letter received from R. N. Hudson, General Manager, which is self explanatory. In regard to his question I will say I do not think that it will be necessary for him to ask permission of the Interstate Commerce Commission to cancel all published tariffs now in effect. Please let me know if you agree with me, that it is not necessary for him to ask the permission of the Commission to cancel these interstate rates. If it is necessary for him to ask permission of the Commission to cancel all published tariffs then I now make the request for him. Will you be kind enough to have this communication promptly answered, and thereby oblige me as well as the parties who are interested?

With best wishes, I am,

Yours truly,

(Signed) A. T. SILER,  
*Chairman.*

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Frankfort, Ky., Dec. 18, 1908.

*IN RE APPLICATION OF NASHVILLE, CHATTANOOGA  
& ST. LOUIS RAILWAY.*

The Nashville, Chattanooga & St. Louis Railway having proposed to revise and reprint its tariff of local passenger fares, to become effective February 1, 1909, as follows:

"Ticket rates, three cents per mile, minimum fare five cents."

"Cash fare train rates, four cents per mile, minimum fare five cents."

"These rates will be figured so as to state the amounts in exact cents, instead of adding or deducting enough to make the rates and in 0 or 5, as heretofore. All one way tickets to be limited for use two days after date of sale."

And the Commission being advised is of the opinion that these proposed changes, as above indicated in this application, are proper, and does now hereby approve changes as above indicated in this application.

(Signed) A. T. SILER,  
*Chairman R. R. Com. for Ky.*

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Williamsburg, Ky., Dec. 24, 1908.

MR. W. L. DANLY,  
Nashville, Tenn.

DEAR SIR:—I here enclose you copy of order which I have entered of record in the office of the Railroad Commission at Frankfort, Kentucky, which I hope may be quite satisfactory to you.

Yours truly,

(Signed) A. T. SILER,  
*Chairman.*

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Williamsburg, Ky., Dec. 24, 1908.

MR. D. B. CORNETT,  
Frankfort, Ky.

DEAR SIR:—Please find enclosed order to be entered of record in case of Nashville, Chattanooga & St. Louis Railway for change in passenger fares. Please enter this order in the proper place as of December 18, 1908.

Yours truly,

(Signed) A. T. SILER,

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Williamsburg, Ky., Dec. 21, 1908.

MR. W. G. DEARING,  
Louisville, Ky.

DEAR SIR:—I am enclosing you two claims for overcharge due W. F. Watkins. The rate on car load lots of cattle from Williamsburg to Stanford is \$18.00. The agent at Williamsburg charged \$25.00 per car on cattle from Williamsburg to Maywood, Ky. May-

wood is an intermediate station between Williamsburg and Stanford. A like charge was made on car load of sheep, and Mr. Watkins is entitled to the same reduction on the car load of sheep as he is on car load of cattle. In my judgment he is entitled to a refund of several dollars on each car, or a total of \$14.00. Please take this question up with the proper department, and advise me.

Yours truly,

(Signed) A. T. SILER,

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Louisville, Ky., January 5, 1909.

MR. A. T. SILER,

*Kentucky Railroad Commission,*  
Williamsburg, Ky.

DEAR SIR:—Referring to your letter of December 21st to General Attorney Dearing, relative to alleged overcharge due Mr. W. F. Watkins, on a car of stock cattle and one car of sheep, shipped by him from Williamsburg to Maywood.

The shipment of stock cattle which moved on December 19, 1908, from Williamsburg to Maywood has been overcharged \$7.00; the rate of \$18.00 per car should have been assessed, instead of the rate of \$25.00 per car as the live stock contract submitted shows to have been collected. We have retained this contract and will arrange for necessary refund to Mr. Watkins.

The rate on sheep, carloads, from Williamsburg to Maywood, in effect on May 26, 1908, and which is still in effect from Williamsburg to Maywood is \$25.00 per car; the rate on similar shipments to Stanford, Ky., is \$26.00 per car, and not \$18.00 as you seem to think. As the proper rate has been assessed on the sheep, there is no overcharge, and I return herewith the live stock contract covering this shipment.

Yours truly,

(Signed) C. B. COMPTON,

*Traffic Manager.*



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# Decision of the Supreme Court of the United States

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SUPREME COURT OF THE UNITED STATES.

No. 521. OCTOBER TERM, 1908.

ADAM T. SILER, McDUGAL FERGUSON AND LEW  
P. TARLTON, CONSTITUTING THE RAILROAD  
COMMISSION OF KENTUCKY -----Appellants,

*vs.* Appeal from the Circuit Court of the United States for  
the Eastern District of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

(April 5, 1909.)

The Louisville & Nashville Railroad Company, hereinafter called the company, filed its bill July 25, 1906, in the Circuit Court of the United States for the Eastern District of Kentucky, (hereafter called the commission), providing what are termed maximum rates on the transportation of all commodities upon the railroad of the company to and from all points within the State. In its bill the company contended that the order as to rates of transportation was void, because it was, upon several stated grounds, in violation of certain named provisions of the Constitution of the United States, among them being the claim that the rate was so low as to be confiscatory. It was also contended that the statute was an interference, in its results, with interstate commerce. The company also contended (among other objections, not of a Federal nature) that the Commission had no power to make the order in question under a correct and proper construction of the State statute of March 10, 1900, under which the commission assumed to exercise the power to fix the rates provided for in its order.

The Circuit Court decided that such act, hereinafter fully set forth and called the "McChord Act," and also the order of the Railroad Commission of Kentucky complained of, irrespective of any



claim that such order was confiscatory, violated the provisions of section 1 of the Fourteenth Amendment to the Constitution of the United States, prohibiting any State from depriving any person of property without due process of law and from denying to any person within its jurisdiction the equal protection of the laws, and that the order of the commission, so far as it was applicable to the company was, therefore, null and void, and the special commissioner who had been appointed to take evidence in the case as to the character of the rates and other matters, was directed to so report. (The court decided the case upon the authority of *Louisville, &c. R. R. Co. v. McChord*, 103 Fed. 216, reversed on other grounds, 183 U. S. 483.)

A final decree having been made pursuant to the decision of the court, the commission appealed directly to this court from such decree. The proceedings which led up to the decree from which the Commission has appealed, without the court passing upon the allegation of the confiscatory nature of the rates, were by means of a stipulation made in order to facilitate matters, by reason of which the court decided as matter of law the order and act were both invalid, and it perpetually enjoined the enforcement of the order as to rates as well as the procuring of indictments against the officers of the company or the company itself.

The appellants disputed the jurisdiction of the Circuit Court upon the grounds which are particularly stated in the opinion herein, and they took issue on many of the material allegations contained in the bill of complaint.

The facts upon which the questions in this case arise are as follows: The Company was duly incorporated under an act of the General Assembly of the State of Kentucky, approved March 5, 1850. It has a large mileage amounting to over 1,200 miles within the State, and it operates its road within the State in connection with other portions of its road in other States, having altogether in Kentucky and such other States a mileage of over 4,000 miles. It claims to have a contract right to fix rates as provided, in its charter, and it contends that the order of the Commission violates that right as well as other rights protected by the Federal Constitution.

The State adopted a new constitution on the 28th day of September, 1891, by section 209 of which the present Railroad Commission of the State was established.

It is asserted by the company, though such assertion is denied, that up to March 10, 1900, the Commission or its predecessors had not been empowered by constitutional or statutory provision to regulate or fix the rate of compensation which a railroad company might charge for the service of transporting freight or passengers over its lines in the State. On the above-mentioned date the General Assembly enacted what is generally called the "McChord Act," which is set forth in full in the margin.\*

\*An Act to prevent railroad companies or corporations owning and operating a line or lines of railroad, and its officers, agents and employes, from charging, collecting or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the Railroad Commission in reference thereto and prescribing the manner of enforcing the provisions of this Act, and penalties for the violation of its provisions.

Section 1. When complaint shall be made to the Railroad Commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates, over its line or lines of railroad in this Commonwealth, or when said Commission shall receive information, or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said Commission to hear and determine the matter as speedily as possible. They shall give the company or corporation, complained of not less than ten days' notice, by letter mailed to an officer or employe of said company or corporation stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, argument or evidence offered by the parties as the Commission may deem relevant, and should the Commission determine that the company or corporation is, or has been, guilty of extortion, said commission shall make and fix a just and reasonable rate, toll or compensation, which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the Commission shall be entered and be an order on the record of their office and signed by the Commission, and a copy thereof mailed

to an officer, agent or employe of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation, or any officer, agent or employe thereof charge collect or receive a greater or higher rate, toll or compensation for like services thereafter rendered, than that made and fixed by said Commission, as herein provided, said company or corporation, and said officer, agent or employe, shall each be deemed guilty of extortion and upon conviction shall be fined for the first offense in any sum not less than five hundred dollars, nor more than one thousand dollars, and upon a second conviction in any sum not less than one thousand dollars, nor more than two thousand dollars, and for a third and succeeding conviction, in any sum not less than two thousand dollars, nor more than five thousand dollars.

Section 2. The Circuit Court of any county into or through which the line or lines of road carrying such passenger or freight owned or operated by said railroad, and the Franklin Circuit Court shall have jurisdiction of the offense against the railroad company or corporation offending and the Circuit Court of the county where such offense may be committed by said officer, agent or employe, shall have jurisdiction in all prosecutions against said officer, agent or employe.

Section 3. Prosecutions under this Act shall be by indictment.

Section 4. All prosecutions under this Act shall be commenced within two years after the offense shall have been committed.

Section 5. In making said investigation, said Commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the Commission, approved by the Governor, the Auditor shall draw his warrant upon the Treasury for its payment.

Approved March 10, 1900.

The Act has not been construed by the Court of Appeals, the highest court of the State of Kentucky, upon the question hereinafter discussed, nor has it been valid as to all of its provisions with regard to the constitution of the State of the United States by any Court, State or Federal.

After its passage, and in December, 1904, and January and February, 1905, one Guenther, a citizen of Owensboro, Kentucky, made complaints to the Commission, in which he complained generally (but without specifying any in particular) that the rates charged by the company, and also by the Illinois Central Railway Company, and the Louisville, Henderson & St Louis Railway Company, on interstate freight to and from Owensboro, as compared with the rates on like freight to and from Evansville, Indiana, and on intrastate freight to and from points in Kentucky to and from Owensboro, were unjust and unreasonable. A petition in regard to interstate rates was subsequently filed with the Interstate Commerce Commission where it is still pending and undetermined. As to regulating the local rates complained of, the Commission then made no finding.

Afterwards Guenther prepared an amended complaint which was filed with the Commission sometime early in September, 1905, in which this company and all other railroad companies operating lines in the State of Kentucky were made defendants, and wherein it was alleged in substance (and again without any details) that all local freights from and to all local points in the State of Kentucky, as fixed and charged by the defendant railroad companies on all classes of freight were excessive, discriminatory and extortionate, and he prayed the commission to revise and adjust the rates, not only in and out of Owensboro, but to revise and adjust the rates between all local points from and to every local point throughout the State of Kentucky.

Subsequently, on the 14th day of September, 1905, three lumber companies of Louisville, Kentucky, tendered their petition to be made parties to the Guenther proceedings then pending, and they adopted the general language of his complaint with respect to all local rates in the State, and they added complaints in regard to the rates on logs, lumber and cross ties.

On the 3rd of October, 1905, the State of Kentucky, through certain attorneys, filed a petition to intervene on the part of the State in the Guenther proceedings, and sought to make the State a party complainant against all the railroad companies as defendants operating lines in the State. The petition was opposed by the company on the ground that the State had no standing in the proceedings, and certainly none by the attorneys named, but it was granted, and the

State intervened as prayed for, and was made a party complainant so that it might prosecute the proceedings against the company and all the other carriers made defendants therein. The proceedings against the various railroad companies within the State were subsequently consolidated before the Commission.

Before answering the complaints of Guenther, the lumber companies and the State of Kentucky against the defendant company and the other railroad companies in that State, the company in this case, duly objected to the proceedings before the Commission on various grounds, among them that the complaint did not state facts sufficient to constitute a cause of action against the company, and on the ground that the complaints were not sufficiently definite and specific, and that the complaints should show specifically what rates are claimed to be exorbitant, excessive or extortionate, or what commodity or which communities the rates of the company discriminate against.

An objection was also duly and in season made that the commission had no power to fix a general maximum rate or rates for all commodities from and to all points within the State, but that specific complaint should be made as to the particular rates complained of. The commission ruled that the entire subject of railroad rates was before it, and decided to proceed with its investigation of such rates on all railroads and between all places and on all classes of commodities within the State of Kentucky.

By virtue of the complaints above adverted to the proceedings against substantially all the railroad companies of the State were then continued, and the commission heard and decided the question of rates relating to this company, and some, but not all, of the other roads in the State.

The commission subsequently and on July 20, 1906, promulgated its order making schedules for "Maximum Rates on Freight," and it implied one schedule, called "Kentucky Railroad Commissioner's Standard Tariff No. 1," to this company and four other companies within the State, although in the case of one of the four (the Chesapeake and Ohio Railroad Company) no notice of such tariff was ever served upon it. Another schedule, called "Kentucky Railroad Commission's Standard Tariff No. 2," applied to the Illinois Central Railroad Company alone, and the commission left several railroad companies untouched by either of such schedules, or by

any schedule, although they were defendants in this proceeding. In its opinion the commission stated as follows: "The several complaints, which for convenience have been consolidated and heard together in this investigation, raise for the first time in Kentucky the question of the reasonableness of all rates for the transportation of all commodities upon all railroads to and from all points within the State."

Mr. Justice Peckham, after making the foregoing statement delivered the opinion of the Court.

The appellants deny the jurisdiction of the Circuit Court in this case. There is no diverse citizenship in the case of this particular company, and the jurisdiction must depend upon the presence of a Federal question. The bill filed by the company herein attacked the validity of the act of the legislature of Kentucky of March 10, 1900, (above set forth in full,) on several grounds as in violation of section 1 of the Fourteenth Amendment. It was also averred that the act was a violation of section 4, article, of the Federal Constitution, in that it constituted an abandonment by the State of Kentucky of a republican form of government, in so far as it vested legislative, executive and judicial powers of an absolute and arbitrary nature over railroad carriers in one body or tribunal styled the railroad commission. The company also contended that the act was in violation of the Federal Constitution, on account of the enormous fines and penalties provided in the act as a punishment for a violation of any of its provisions also that the enforcement of the act would operate to deprive the company of its property without due process of law and would deny to it the equal protection of the laws, in violation of section 1 of article 14 of the amendments to the Constitution of the United States. Other grounds of alleged invalidity of the act in question, as in violation of the Federal Constitution, are set up in the bill. The bill also contained the averment that the order of the railroad commission of Kentucky, in making a general schedule of maximum rates for the railroads mentioned in its order, was invalid, as unauthorized by the statute. This is, of course, a local or State question.

The Federal questions, as to the invalidity of the State statute because, as alleged, it was in violation of the Federal Constitution, gave the Circuit Court jurisdiction and having properly obtained it,

that court had the right to decide all the questions in the case, even though it decided the Federal questions adversely to the party raising them, or even if it omitted to decide them at all, but decided the case on local or State questions only.

This Court has the same right and can, if it deem proper, decide the local questions only, and omit to decide the Federal questions, or decide them adversely to the party claiming their benefit. *Horner v. United States*, 143 U. S. 570, 576; *Fallbrook Irrigation District v. Bradley*, 164 Id. 112, 154; *Penn Mutual Life Insurance Co. v. Austin*, 168 Id. 685, 694; *Burton v. United States*, 196 Id. 283, 295; *Williamson v. United States*, 207 Id. 425; *People's Savings Bank v. Layman*, 134 Fed. 635; *Michigan Railroad Tax Cases*, 138 Fed. 223. Of course, the Federal questions must not be merely colorable or fraudulently set up for the mere purpose of endeavoring to give the court jurisdiction. *Penn. Mutual Life Insurance Co. v. Austin*, *supra*, p. 695; *Michigan Railroad Tax Cases*, 138 Fed. 223, *supra*.

The character of some of the Federal questions raised is such as to show that they are not merely colorable, and have not been fraudulently raised for the purpose of attempting to give jurisdiction to a Federal court.

The appellants, however, contend that the jurisdiction of the Circuit Court did not attach under the Fourteenth Amendment because of the allegations contained in the bill of the company, in which was contained an averment that the defendants below (the appellants here) had not been vested with the power, by either the constitution of the State of Kentucky or by any act of its legislature, or by any law, to make and enter the order of July 20, 1906, complained of in the company's bill. The argument of the appellants is that in order to violate the Fourteenth Amendment the action complained of must be under the authority of the State, and where the allegation of the bill was that "no power or authority had been vested in or conferred upon the appellants by the act of March 10, 1900, or by any law, to make or fix the rates complained of," such allegation swept away the foundation for the claim of Federal jurisdiction, inasmuch as in such case the action of the railroad commission was not the action of the State, and the principle decided in *Barney v. City of New York*, 193 U. S. 430, 437, was applicable.

If the averment as to the invalidity of the order of the commission were the only ground upon which a Federal question was founded, and if the bill alleged that the order was invalid because it was not authorized by the State, either by statute or in any other way, the objection might be good, but the bill sets up several Federal questions. Some of them are directed to the invalidity of the statute itself, on the ground that it violates various named provisions of the Federal Constitution in addition to and other than the Fourteenth Amendment, while some of the other Federal questions are founded upon the terms of the order made by the commission, under what is claimed by the commission to be the authority of the statute. The bill also sets up several local questions arising from the terms of the order, and which the company claims are unauthorized by the statute. The various questions are entirely separate from each other. Under these circumstances there can be no doubt that the Circuit Court obtained jurisdiction over the case by virtue of the Federal questions set up in the bill, without reference to the particular violation set up in regard to the Fourteenth Amendment.

Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued and is not departed from without important reasons. In this case we think it much better to decide it with regard to the question of a local nature, involving the construction of the State statute and the authority therein given to the commission to make the order in question, rather than to unnecessarily decide the various constitutional questions appearing in the record.

The commission has assumed the power under this statute of making what are termed general maximum rates for the transportation of all commodities upon all railroads to and from all points within the State, and this company is included in the general order made by the commission. This is an enormous power. Jurisdiction so extensive and comprehensive as must exist in a commission in the making of rates by one general tariff upon all classes of commodities upon all railroads throughout the State is not to be implied. The proper establishment of reasonable rates upon all commodities carried by railroads, and relating to each and all of them within the State depends upon so many facts which may be very different in regard to each road, that it is plain the work



ought not to be attempted without a profound and painstaking investigation, which could not be intelligently or with discrimination accomplished by wholesale. It may be matter of surprise to find such power granted to any commission, although it would seem that it has in some cases been attempted. *Interstate Commerce Commission v. Railroad Co.*, 167 U. S. 479, 495. In any event, the jurisdiction of the commission to establish all rates at one time and in regard to all commodities on all railroads in the State, on a general and comprehensive complaint to the commission that all rates are too high, or upon like information of the commission itself, must be conferred in plain language. The commission, as an extraordinary tribunal of the State, must have the power herein exercised, conferred by statute in language free from doubt. The power is not to be taken by implication; it must be given by language which admits of no other reasonable construction.

In this case we are without the benefit of a construction of the statute by the highest State court of Kentucky, and we must proceed in the absence of State adjudication upon the subject. Nevertheless, we are compelled to the belief that the statute does not grant to the commission any such great and extensive power as it has assumed to exercise in making the order in question.

The first section of the statute provides for a complaint being made to the commission accusing the railroad company of changing or receiving extortionate freight or passenger rates over its lines or railroad in that State; or if the commission receive information or have reason to believe that such rate or rates are being charged, it is its duty in either case to hear and determine the matter as speedily as possible. The commission is to give the company complained of not less than ten day's notice, and the notice must contain a statement of the nature of the complaint or matter to be investigated, and if the commission, after investigation of the complaint or on its own information, determines that the company has been guilty of extortion, the commission is in that case authorized to make and fix "a just and reasonable rate, toll or compensation, which said railroad company or corporation shall charge, collect or receive for like service thereafter rendered." The whole section, it seems to us proceeds upon the assumption that complaint shall be made of some particular rate or rates being charged, or if without formal complaint, the commission receives information or has

reason to believe that such rate or rates are being charged, then the investigation is to go on in relation to those particular rates. We can not for one moment believe that under such language as is contained in the section the commission is clothed with jurisdiction, either upon complaint or upon its own information, to enter upon a general investigation of every rate upon every class of commodities carried by all the roads of the State from or to all points therein, and make a general tariff of rates throughout the State, such as has been made in this case. No such power was given to the Interstate Commerce Commission. *Interstate Commerce Commission v. Cincinnati, etc., Railway Co.*, 167 U. S. 479, *supra*. As the express power was not given in so many words to the commission, this court held that it could not be implied.

The so-called complaints in this case, above mentioned are, as we construe the statute, entirely too general to raise any objection to a specific rate. Guenther, in his petition, in substance alleged "that all local freight rates to and from all local points in the State of Kentucky, as fixed and charged by all railroads on all classes of freight, are excessive, discriminatory and extortionate." The lumber companies, which were permitted to intervene, made substantially the same complaint (with an addition as to lumber, ties and logs), and the attorneys appearing in behalf of the State of Kentucky joined in the general complaint of Guenther. If complaint were necessary to enable the commission to make rates, the allegations in the complaint of Guenther were mere sweeping generalities, and were in no sense whatever a fair or honest compliance with the statute. The commission itself, in order to act, must have had some information or had some reason to believe that certain rates were extortionate and it could not, under this statute, enter upon a general attack upon all the rates of all the companies throughout the State and make any order such as this in question. Such action is, in our judgment, founded upon a total misconstruction of the statute and an assumption on the part of the commission of a right and power to do that which the statute itself gives it no authority whatever to do.

And again, the section provides that if the commission should determine that the company had been guilty of extortion, it must instead of the extortionate rate, make and fix a reasonable and just rate which the company may charge for its service thereafter rendered. This language is not apt by which to confer power to es-

tablish a schedule of rates applicable in all cases to all commodities and on all roads, and on the contrary it strengthens the view that no such general jurisdiction to establish rates in all cases for all roads throughout the State by a general tariff was in the contemplation of the framers of the statute.

It may also be stated that if the statute was really intended to give the commission power to make a general schedule of rates, we should expect to find, almost necessarily, a right to increase as well as to reduce those rates in some instances, in order to produce an equality, where otherwise, great inequalities might exist as a result of the putting the general schedule of reductions in force. Here is a case where the schedule of rates was reduced from twenty to twenty-five per cent. upon an average. Some of the rates not touched might require increase in order to make the whole schedule fair and reasonable, and yet the commission could not make the increase over the amount theretofore collected by the company. This seems to us to be a very strong argument in favor of the view that the legislature never intended to and did not in fact give such a power to establish general maximum rates, but confined it to one or two or a few specified rates, which might be reduced upon complaint, and where there might be a real investigation of all the problems involved in the propriety of the reduction in a few distinct and separate cases. A sufficient investigation of the whole series of rates on all the roads in the State by one commission is almost an impossibility, and an attempt to do so would prove a failure, and would in all probability, result in a gross injustice to the roads. The statute, it will be remembered, gives no power to the commission to fix rates, unless it has already determined that the rates complained of, which it has investigated upon its own information, are extortionate after hearing the parties and then it fixes the rates at a just and reasonable amount. If no extortion is found in any particular rate there can be no fixing of rates in that particular. And yet that particular rate might require increase in order to make the whole schedule just, fair and reasonable. A general power to fix rates under such limitations cannot be supposed to have been within the intent of the legislature. The difference between the fixing of one rate, or a few upon specific complaint or information, and the adoption of a general scheme of rates applicable in all cases to all roads, is vast and important. In the one case it can be fairly

accomplished, while in the other, the chances of injustice and great inequalities are infinite and almost certain to occur.

We do not say that under this statute, as we construe it, there must be a separate proceeding or complaint for each separate rate. A complaint, or a proceeding on information by the commission itself, in regard to any road, may include more than the rate on commodity or more than one rate, but there must be some specific complaint or information in regard to each rate to be investigated, and there can be, under this statute, no such wholesale complaint, which by its looseness and its generalities can be made applicable to every rate in operation on a railroad or upon several or all of the railroads of the State. If the legislature intended to give such an universal and all prevailing power it is not too much to say that the language used in giving it should be so plain as not to permit of doubt as to the legislative intent.

The appellants contend that in any event the order made by the commission December 7, 1905, regarding rates on lumber, logs and cross ties, to and from all points in the State, ought to stand as reasonable and proper. The complaint made by the lumber dealers in their petition to intervene in the Guenther proceeding adopted the language of that petition as to all rates upon all commodities upon all roads throughout the State, and then added a specific complaint as to the logs, etc. While the whole proceeding as to all rates was pending before the commission it took up as part of it, the question of the reasonableness of all the rates on lumber to and from all points in the State. This proceeding is, therefore, but a part of the whole proceeding involving an investigation as to every rate on all commodities on every road throughout the State, and we do not think it a case where a particular rate on a specific commodity, applicable all through the State upon all roads, should be separated from the general order, when the specific order was made after the general complaint was filed and is itself a general order, and was made by the commission in the exercise of an assumed power claimed to be given by the statute, which claim we hold was totally unfounded. We therefore think that in this particular case the order as to lumber rates must fall with rest of the assumed jurisdiction of the commission.

There is nothing in our decision in *McChord v. L. & N. R. R.* 183 U. S. 483, which affects the question discussed in this opinion.

We are of opinion that under the statute the commission had no authority to make a general tariff of rates, and the final decree of the Circuit is for that reason.

AFFIRMED.

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SILER, et al., AS RAILROAD COMMISSION-----*Appellants,*  
522           *vs.*  
ILLINOIS CENTRAL RAILROAD COMPANY.

SILER, et al., AS RAILROAD COMMISSION-----*Appellants,*  
523           *vs.*  
SOUTHERN RAILWAY IN KENTUCKY.

SILER, et al., AS RAILROAD COMMISSION-----*Appellants,*  
524           *vs.*  
CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAIL-  
WAY COMPANY.

The above entitled cases raise the same question that is decided in Louisville and Nashville Railroad Company, *supra*, and upon its authority, the decrees in the above cases are affirmed.

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# ACCIDENTS TO PERSONS

## 1908

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## ACCIDENTS TO PERSONS, 1908

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CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RY. CO.

1908.

W. W. Mansfield, brakeman, fell from train near Ludlow about 5:30 p. m. January 17th, and was instantly killed.

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W. M. Starks, brakeman, who was hurt at Georgetown, died shortly afterward at Lexington, February 1, 1908.

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D. Mahoney died of injuries received at Burgin at 5:15 p. m., February 18th.

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In a head-end collision at 6:25 p. m., March 1st, about one mile south of Mason, Ky., W. E. Denham, brakeman, was killed; E. M. Caldwell, agent at Mason, and an unknown tramp were fatally injured.

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An unknown man was killed by 2nd No. 74 just north of Science Hill, Ky., on the 14th of March.

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Fireman J. W. Surber injured in head on collision, north of Burgin at 6:45 a. m., March 24th, died at noon.

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Pat Ryan, fireman, was instantly killed at Ludlow, about 11:40 p. m., April 14th, by collision between parted train and No. 51.

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Jack Ryan, coal miner, found dead at Mile No. 196, 12:30 a. m. on the 18th.

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An unknown man, supposed to be Earl Hudson, was struck by first number 3 in the north end of Lexington yards about 10:20 p. m., the 24th of March, and killed.



Harrison Keith, laborer, died at noon, May 15th, from injuries at 11 a. m., in Danville yard.

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J. M. Cox, conductor, was instantly killed at Burnside, Ky., May 23rd.

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Unknown negro run over and killed at Danville Passenger Depot, May 26th.

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John Betts, flagman, was sleeping between rails and was struck and instantly killed by Train Extra South 739 about three miles south of Somerset, June 24th.

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Joseph Murphy, a trespasser on tracks at Junction City, was struck by No. 1 at 11:48 a. m. and July 3rd, instantly killed.

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John Creekmore, laborer, at 8:10 a. m. July 29th, was struck at Whitley, Ky by 1st 76 and died shortly thereafter of injuries received.

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Lee Michael, trespasser, fell from one of Q. & C. trains near Ludlow early in the morning of the 11th and received injuries from which he died later.

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L. Kidd, laborer, fell off hand car one-half mile south of Pine Knot, August 20th, and was instantly killed.

---

Wm. Letcher, struck by No. 6. on bridge over Elkhorn Creek, on August 20th, and died at 1:20 a. m., August 23rd.

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The body of an unknown negro was found on tracks between Ludlow and Erlanger on the morning of August 26th.

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The body of Mid Caldwell, run over by Extra South 710, just north of Waynesburg at 3:52 p. m., October 11th, was found upon the tracks.

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At 5:00 p. m., November 27th, near Danville, Ky., Squire Vaught was run down and instantly killed by No. 2.

## CHESAPEAKE AND OHIO RAILWAY COMPANY—1908

*January 12, 1908, Mt. Sterling, Ky., 12:20 A. M.* Lillian Bush colored man, age 25, single, was found at west switch storage track with head severed from body just after 299, a westbound freight train passed Mt. Sterling.

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*South Portsmouth, Ky., 7:30 p. m., March 5, 1908,* John Bailey, about 60 years of age, fell off Kentucky float and was drowned.

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*Between Dayton and Bellevue, Ky., night of March 7, 1908,* Thos. Bluett (white), trespasser, about 40 years of age, is supposed to have been killed by some train.

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*Covington, Ky., 2:45 a. m., March 9th,* L. C. Newberry, trespasser, (white), about 40 years of age, fell off of an engine and was run over by engine and instantly killed.

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*Bellevue, Ky., about 2:35 p. m., March 11, 1908,* Cal Manter (white), trespasser, about 14 years of age, while getting off of an eastbound freight train fell under wheels and was fatally injured. He died from injuries sustained at 6:00 p. m., March 11th.

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*Russell, Ky., 10:25 p. m., March 22d;* C. Vanhooose (white), trespasser, 42 years of age, was run over and instantly killed by westbound freight train 2d 95.

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*"One mile west of Catlettsburg, Ky., 2:05 p. m., March 28, 1908.* Chas. Kimmel, white, 25 years of age, single, residence Dayton, Ohio, attempted to board extra 365 west while train was running about 20 miles per hour, and was thrown under car, badly cutting and bruising him about head and body and cutting off right leg between ankle and knee. Immediately necessary medical attention rendered by Dr. Williams, of Catlettsburg, and injured party removed to Huntington where he died at 5:40 p. m. Remains turned over to undertaker and his relatives notified."

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*Covington, Ky., 11:00 a. m., April 9, 1908,* Chas. Meyers, machine

hand, 25 years of age, was oiling shafting in machine shop when his clothing caught and wound him around shafting, instantly killing him.

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*Covington, Ky. (Bridge over Rickey Street), 4:50 p. m., May 9, 1908, A. B. Knight, trespasser, 30 years of age, was struck by west-bound passenger train No. 3 and instantly killed.*

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*Newport, Ky., 3:25 p. m., May 18, 1908, Arthur Dressman, trespasser (white), about 21 years of age, attempted to jump on west-bound freight train 1st 75 and was instantly killed.*

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*June 5, 1908, one and one-half miles west of Chapman, Ky., Big Sandy District, 5:45 p. m. A. Berry, engineer, white, age 48, married, while running engine 813, train No. 38, an eastbound passenger train, running at a speed of twenty miles per hour, derailed, and engine turned over, fatally injuring Engineman Berry.*

*He died at 7:00 a. m., Saturday, 6th.*

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*June 11, 1908, Lexington Kentucky Shops, 3:10 p. m., Lester Fort, machinist helper, age 18, white, single, was cleaning off shaft while running and was caught on coupling and body crushed, died one hour after accident.*

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*About three-quarter miles east of Newport, Ky., 4:40 p. m., June 19, 1908, westbound passenger train No. 3 struck and instantly killed Mrs. Eva Hoffman (white), trespasser, 87 years of age.*

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*July 16, 1908, one and one-half miles west of Mt. Sterling, Ky., 11:40 p. m., Harry Hamilton, said to be a pickpocket, following John Robinson's 10 Big Shows, age 40, white, in some unknown manner, fell between cars in Extra 489, first section of John Robinson's Circus train, which was running at a speed of 15 miles per hour and was run over and instantly killed.*

---

*August 9, 1908, Belmont Crossing (just west of Ashland Tunnel). 12:35 a. m., Oscar Sims, a laborer at Ashland Steel Company, age 29, white, single, remains of body found on track badly mutilated by one*

Wm. McNight. The body was evidently run over by eastbound passenger train No. 24, which passed that point about 12:35 a. m., running at a speed of twelve miles per hour.

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*August 17, 1908, Ashland Junction, Ky., 10:10 a. m.,* Charles Grone, age 46, white, Yard Foreman, single, stepped in front of a cut of thirteen cars being handled by yard engine No. 175, speed six miles per hour, lead truck of lead car passed over him badly lacerating scalp and face, compound fracture of right arm, multiple fracture of both hips, with minor cuts and bruises. Grone died at Kings Daughters Hospital, Ashland, August 17th, thirteen hours after accident.

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*September 6, 1908, Winchester, Ky., time unknown,* Sam Hines, trespasser, colored, widower, no children, age about 30 years, a laborer, a resident of Winchester, Ky., was found dead on track 300 yards east of over-head bridge, east end of Winchester yard and was evidently killed by C. & O. No. 95, which passed Winchester at 2:18 a. m., Sunday, 6th.

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*September 6, 1908, E. K. Junction, Ky., time unknown,* Auther Boggs, trespasser, age 23 years, white, single, a laborer at rock crusher at Highland, Ky., was found dead on track 300 yards west of E. K. Junction, 5:50 a. m., on the 6th, cut to pieces and had been run over by some of C. & O. night trains.

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*South Portsmouth, Ky., 4:51 p. m., September 25, 1908,* Harry Clemmer (white), trespasser, 29 years of age, attempted to jump on westbound freight train No. 2nd 71 and fell under train and instantly killed.

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*September 27, 1908, Catalpa, Ky., 7:20 p. m.,* John Whittaker, a laborer residing at East Point, Ky., age 28, white, single, a passenger on train No. 38 holding return portion of excursion ticket reading from Catlettsburg to Pikeville, Ky., shot in right breast by Marshal F. D. Marcum, of Louisa, Ky., and died about 10 minutes after being shot. Whittaker was drunk and very boisterous and Marshal Marcum had placed him under arrest. The coroner's jury brought in a verdict that Whittaker came to his death by a gunshot wound from a gun in the hands of City Marshal F. D. Marcum, Louisa, Ky., self-defense.

*September 28, 1908, Mt. Sterling, Ky., time unknown, Daniel Bradshaw, occupation unknown, colored, age 17, trespasser, was found dead at west end of trestle over Henkston Creek, which is the first bridge east of Mt. Sterling Depot, about 9:45 a. m., by Annie Keefe. Skull crushed over right temple and had evidently been dead for some-time when found. Coroner's jury rendered verdict that Bradshaw came to his death by jumping off of some C. & O. train (number unknown).*

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*October 12, 1908, Louisville, Ky., 8:36 a. m., J. H. Williams, age 60, white, carpenter by occupation, married, was walking on track at a point about one hundred feet east of Campbell Street Crossing, was struck and run over by train No. 22 and fatally injured. He died while in an ambulance on the way to the City Hospital.*

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*Dover, Ky., 5:39 a. m., October 19, 1908, Daniel York (colored), section laborer, 42 years of age, was taken off of engine tank of west-bound passenger train No. 19 dead. There were no marks on his body showing that he had been injured in any way. He was said to be subject to heart trouble, and is supposed to have died of heart failure.*

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*October 27, 1908, Lexington, Ky., about 5:45 p. m., Chas Mahoney, plumber, age 26, white, single, was found dead by John O'Day, of Lexington, Ky., about 7:15 p. m. The mutilated body was lying across Belt Line track at the extreme end of West Third Street with head severed from body at the neck, left arm crushed, fingers and thumb on right hand mashed off and left collar bone broken. Mahoney was evidently run over by yard engine No. 208 with a cut of 11 cars which passed scene of accident about 5:45 p. m.*

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*October 31st, 1908, Parks, Ky., 12:50 P. M. Melvin Wells, occupation unknown, trespasser, age 18, single, while attempting to board a cut of cars being handled by engine 231 on train No. 67, fell under cut and was fatally injured, body cut in two.*

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*Remains turned over to officers at Olive Hill, Ky., and Coroner notified.*

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*Covington, Ky., about seventy-five feet west of Ninth Street Crossing, 2:15 p. m., November 5, 1908, westbound passenger train No. 17*

struck and fatally injured Mrs. Maggie Brackenridge (colored), trespasser, about 85 years of age. She died on the way to the hospital.

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*Dayton, Ky., 10:08 p. m., November 25, 1908,* Edward T. Stewart, (white), trespasser, 17 years of age, jumped off or fell off of west-bound freight train 4th No. 75 and was fatally injured. He died about three hours after accident occurred.

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*November 26, 1908, one mile west of Stepstone, Ky., 9:00 a. m.,* Nesley Bailey, colored, age 14, single, while attempting to board extra 222 west, freight train, fell under train, was run over and fatally injured. He died at 1:30 p. m., same date.

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*December 10, 1908, Lexington, Ky., 11:50 a. m.,* J. S. Smiley, L. & N. Car Inspector, age 55, white, married, jumped on side of a cut of cars being handled by C. & O. yard engine No. 12, was struck by scale beam box and knocked off cut of cars run over and fatally injured. Speed of cut six miles per hour.

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*December 10, 1908, The Forks, Ky., 8:50 a. m.,* Al. Huffman, trespasser, occupation unknown, age 80, white, a widower, deaf, while walking along side of track stepped in front of extra 227 west, a freight train, speed 12 miles per hour, was run over and fatally injured, died later.

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*Ashland, Ky., 12:35 p. m., December 8, 1908,* Extra 387 west, running about 6 miles per hour, Arthur Andies, white, 17 years of age, single, employed as laborer by the Ashland Steel Company, Ashland, Ky., attempted to board train, fell under car, wheels passing over body instantly killing him. Remains taken in charge by coroner and turned over to Undertaker Fisher at Ashland.

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*About one-half mile east of South Ripley, Ky., 4:30 p. m., December 19, 1908,* westbound passenger train No. 7 struck and instantly killed Joseph Ernst (white), farmer, 70 years of age.

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*Covington, Ky., on Licking River Bridge, about 10:45 a. m., December 23, 1908,* Ralph Rouse (white), trespasser, 20 years of age,

attempted to jump on eastbound freight train extra 526 and fell under train and was instantly killed.

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ILLINOIS CENTRAL RAILROAD COMPANY.

1908.

J. L. Miller, struck and killed by train No. 151, Horse Branch, Ky. Jan. 22, 1908.

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4:00 p. m., January 31, 1908, pile driver leads dropped on bridgeman Marshall Zook, while he was working on pile driver at bridge near Fordsville, resulting in his death.

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7:30 a. m., February 1, 1908, the remains of an unknown negro were found on the track at Nortonville. It is not known how he came to his death.

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Unknown colored man was found twenty feet from the trestle of track at Daniel Boone, Ky. There were no marks on his person, and he had the appearance of having frozen to death. It is not likely that he was struck by a train.

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Unknown man, probably Fred Lamb, found dead at Ruth, Seven a. m., March 4, 1908.

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John McGuire, found beside track, fatally injured, near Eddyville Street, Princeton, Ky., March 3, 1908.

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Jake Walker, colored helper, run over and killed by train, North yard, Paducah, Ky., March 11, 1908.

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Arthur Williams, brakeman, accidentally shot and killed by brakeman Albert Collier, Sturgis, Ky., 11:35 a. m., March 23, 1908.

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Unknown white boy, age about 16, found dead by track, McHenry,

Ky., 6:00 a. m., March 29, 1908. Report in this matter states that it is not known how this boy came to his death and that an investigation was held by the County Judge, and result was that cause of death was unknown.

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Henry Knapp killed by yard engine, Louisville, Ky., April 15, 1908.

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J. P. Wooldridge, flagman, killed Princeton, Ky., April 19, 1908.

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Vernon Hamby, trespasser, alighting from freight train at Dawson, 10:58 p. m., May 1, 1908, was instantly killed.

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Man found dead on track, Rockport, Ky., May 3, 1908. Inquest was held and coroner's jury found that man came to his death from unknown cause.

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Train flagman J. M. Conroy fell from platform of caboose at Sturgis, Ky., at 5:30 p. m., May 6, 1908, sustaining injuries which proved fatal same day.

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William Jones, track walker, found dead on track one mile north of Krebs, Ky., June 10, 1908. Supposed to have been struck by train.

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6:50 a. m., June 9, 1908, Will Childers, age 21, while loading logs on a car at Blackford, was caught between two logs and killed.

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L. H. & St. L. train 113, struck a team and wagon on private crossing one mile south of Valley, resulting in death of Eli Case, the driver. At the time of the accident the L. H. & St. L. train was operating over Illinois Central rails.

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Henry Nall struck and killed by train No. 152, Vine Grove, Ky., June 30, 1908.

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Silas W. Holland struck and killed by train near Central City, Ky., July 18, 1908. The deceased, it is said, was walking along the track at the time he was struck by the train and was struck shortly after the train passed a curve in the track.



5:20 a. m., August 8, 1908, the body of an unknown negro, age about 25, was found on track at Princeton, having been run over by a train.

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Finis Baise found dead on track near Baisetown, Ky., August 11, 1908. It is not known how Baise met his death, but it is supposed that he fell off of train, on which he is supposed to have been stealing a ride.

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Unknown white man found dead on track near Water Valley, Ky., August 11, 1908. This man is supposed to have been asleep on the track and run over by northbound train. There was nothing on the body by which to identify him.

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Unknown man found dead near Clinton, Ky., August 13, 1908. He was evidently run over by some train unknown and was interred without identification.

---

Remains of an unknown negro were found near Mayfield at 7:45 a. m., August 22, 1908. The negro had been shot in the back.

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Body of Wallace Jones, age 40, was found lying on east side of track two and one-half miles north of Boaz, September 6, 1908.

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10:14 a. m., September 27, 1908, T. L. Moore was struck by train near Barlow and instantly killed.

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W. B. Green injured account falling from train No. 151, at Princeton, Ky., October 9, 1908. The injuries sustained by Green, in the manner suggested, resulted fatally.

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P. J. Shidell, struck and killed by train, near Paducah, Ky., October 29, 1908, age 65 years.

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Ben Hudson, trespasser, struck by train at Paducah, November 19, 1908, died same day.

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11:20 a. m., December 10, 1908, the body of an unknown negro

was found under trestle just south of Gravel Switch. It is not known what was the cause of his death.

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S. Hunter, brakeman, switching at Powderly, 3:05 p. m., December 26, 1908, instantly killed.

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### LEXINGTON & EASTERN RAILWAY COMPANY.

1908.

April 24, 1908. at Athol, Breathitt County, Ky., a station on the Lexington and Eastern Railway Company, one Sherman Bowman, a laborer about 23 years of age, residing in said county, not in the employ of said Railway Company, said to have attempted to board a freight train that was running out from said station, missed his footing, fell, one foot cut off and the other leg crushed, one arm crushed and otherwise injured. The Company carried him to Jackson, about eleven miles distant, and at the request of his father, and under advice of physician, brought him to Lexington on the Company's passenger train April 24th and placed him in the Good Samaritan Hospital, where his leg and left arm were amputated, from the shock of which he died about 1:00 a. m., April 25.

---

Wilgus Mays, a brakeman employed by the Lexington and Eastern Railway Company, was killed November 25, 1908, on eastbound freight train No. 14. While riding a box car on a sharp curve, a flange broke and derailed several cars. Mays was caught between two cars and crushed to death. He was unmarried and lived in Powell County, Ky.

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Richard Powell, April 3, 1909, struck by passenger train, resulting in his death April 4, 1909.

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### LOUISVILLE & JEFFERSONVILLE BRIDGE CO., 1908.

Jas. Benson, student switchman and extra employee, fatally injured

5 p. m. Jan. 3, 1909. Ran over by cut of cars. Died night of January 3.

---

Wm. Meyers, age 28 years, in the employ of the Southern Railway Co., as car repairer, while working in Youngstown yard was on April 16, 1908, at about 2:00 a. m. killed on No. 10 track, and was found sometime afterwards.

It is evident that some engine pushed in on the cut of cars he was working with or that he was passing between two cars when the accident occurred.

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At about 10:50 p. m., April 30, 1908, brakeman O. J. Hunt, in the employ of the B. & O. S.-W. Railway, attempted to couple the air on some cars that were to go into B. & O. S.-W. train No. 52, which was being made up in Youngstown yards, when engine No. 7 shoved several cars in on same track, and Hunt must have been caught between two cars, causing injuries from which he died 3:45 a. m., May 1st.

---

8:40 p. m., September 26, 1908, one named Thomas Cockrell was fatally injured (and died between 12:00 and 1:00 a. m. next morning) in Youngstown yard, by being struck and run over by a cut of cars handled by switch engine No. 4.

Mr. Cockrell gave his age as 29 years, and his address as No. 25 South Oriental St., Indianapolis, Ind.

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He was walking on tracks in yard, and the supposition is that he went to get out of the way of one train and stepped in front of the above named train, resulting in fatal injury as stated.

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#### LOUISVILLE & NASHVILLE R. R. CO., 1908.

On the evening of the 4th of January, 1908, G. S. Gardner was struck and killed by a freight train on crossing at Crescent Hill, Ky., on Cincinnati Division.

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January 6, 1908, near Pineville, Ky., on the Cumberland Valley

Division, John Nonson was run over by a freight train and fatally injured while trespassing on track, in an intoxicated condition.

---

January 24, 1908, at 8:15, Thomas Hickey, a section laborer in Louisville yards, on Main stem, First Division, attempted to cross track in front of a cut of moving cars, when he was run over and killed.

---

A boy trespasser named Flowers was fatally injured January 30, 1908, while stealing a ride on freight train at Elizabethtown, Ky., on Main Stem, First Division.

---

February 4, 1908, at Lebanon, Ky., on Lebanon Division, George Miles, a colored section laborer, while working on track, was run over by a cut of cars, and fatally injured.

---

On the morning of the 5th of February, 1908, the dead body of W. M. Mason (colored), was found along side track near Lancaster, Ky., on the Richmond Branch.

It is supposed he was struck by a train while trespassing.

---

On the morning of February 9, 1908, near Pine Hill, Ky., on Lebanon Branch, Harry Jenkins, a brakeman, fell between two cars in a freight train, and was run over and killed.

---

On February 13, 1908, brakeman W. A. Hunt was fatally injured at Gum Sulphur, Ky., on Lebanon Branch. He was flagman of a freight train, and was sent back to flag passenger train, but went to sleep on track and was run over by that train.

---

February 24, 1908, at Altamont, Ky., on Kentucky Division, Price Irvin, a brakeman, was knocked off side of a box car by a box under mailcrane, and was run over and killed.

---

On the morning of March 1, 1908, the mangled remains of E. L. Harlow were found on track near Woodland, Ky., on Main Stem, First Division. He had been run over by some train while asleep or drunk on the track.

On the night of the 17th of March, 1908, L. L. Puckett, switchman, was killed by being caught between coaches at Louisville, Union Station, on Main Stem, First Division.

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On the night of the 18th of March, 1908, a man named Cohen, alias Miller, was killed by falling from freight train on which he was stealing a ride near Bashaws, Ky., on Cincinnati Division.

---

On the morning of the April 1, 1908, John Foster (colored), of Cincinnati, was killed near Emanuel, Ky., on Cumberland Valley Division. It is supposed that he was struck by a passenger train while trespassing on the track.

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On the night of the 4th of April, 1908, Birdine Roberts (colored) was struck by a passenger train and killed while trespassing at Yoder, Ky., on Bloomfield Branch.

---

April 7, 1908, the remains of Henry McKinney (colored), were found on the track at Winchester, Ky., on Kentucky Division. It is supposed that he was run over by some train while trespassing on the track sometime during the night.

---

On the morning of April 8, 1908, an unknown man was struck by freight train and fatally injured while walking on track near Bonham, Ky., on Cincinnati Division.

---

At 7:20 p. m. on April 25, 1908, Henry Mines, a trespasser, was struck and killed by a train near Paris, Ky., on Maysville Branch, while lying on track in an intoxicated condition.

---

On April 25, 1908, near Pineville, Ky., on Cumberland Valley Division, Tillman Woodward and Charles Patterson, two passengers on an excursion train, got out on top of the train and fell off as it was passing over a bridge, and were drowned in creek below. Both men were drinking.

Difficulty has been experienced in obtaining definite information in regard to this case.

At 8:42, April 29, 1908, J. P. Wickham, a yard watchman, attempted to cross track in front of a passenger train in yards at South Louisville, on Main Stem, First Division. He was struck by the engine and fatally injured.

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On the night of April 28, 1908, Theodore Wright, colored, was found on track near Middlesborough, Ky., on Cumberland Valley Division, with injuries that resulted in his death. He stated that he jumped from a moving freight train and fell under car.

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On the morning of May 3, 1908, the body of John Graham was found on track near Barboursville on Cumberland Valley Division. It is supposed that he was run over by some train.

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On the night of May 5, 1908, George Hardin was found on track near Jellico, Ky., on Knoxville Division, with injuries that resulted in his death May 6, 1908.

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May 16, 1908, an unknown white man was struck and killed by a freight train while walking on track near Hanson, Ky., on Henderson Division.

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On the morning of June 3, 1908, an unknown negro boy, about 12 years old, was killed near Hazel Patch, on Kentucky Division. It is supposed that he fell between the cars while stealing a ride on freight train.

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June 10, 1908, Thos. Greenwell, switchman, killed in yards at South Louisville.

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On the afternoon of June 9, 1908, a freight train struck and killed an unknown white man on crossing just north of St. Matthews, Ky., on Cincinnati Division.

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On the evening of June 13, 1908, John Ware (colored), was struck and killed by some train near Pembroke, Ky., on Henderson Division, while trespassing on track in a partially intoxicated condition.

June 15, 1908, at Shepherdsville, on Main Stem, First Division, J. H. Bell, a citizen, was assisting in unloading a car of yellow pine timber, when a heavy stick of the timber fell on him and killed him.

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On the night of June 18, 1908, at Henderson, Ky., on Henderson Division, John Williams (colored), trespasser, was run over and fatally injured while attempting to board some train, or while asleep on track. He was apparently under the influence of intoxicants.

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On the morning of June 28, 1908, Willis Barlow (colored), trespasser, was struck and instantly killed by a freight train at Horse Cave, Ky., on Main Stem, First Division, while sitting on end of a cross tie in a drunken stupor.

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June 29, 1908, at Paris Junction, near Paris, Ky., on Kentucky Division, an unidentified negro trespasser was run over and instantly killed by cars which were being handled by a switch engine.

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On the night of July 3, 1908, Hayden Lucas, trespasser, was found at side of track at Falmouth, on Kentucky Division, with injuries which resulted in his death a few hours later. It is supposed that he was struck by a train while sitting on track asleep or drunk.

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Early on the morning of July 8, 1908, the remains of Peter T. Klein, a trespasser, were found near track at Memphis Junction, Ky., on Main Stem, Second Division. The man had evidently been struck by some train or had fallen from a train while stealing a ride.

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July 11, 1908, in yard at East Louisville, on Cincinnati Division, Clarence Scales, a youthful trespasser, stumbled over a dwarf signal in attempting to board a freight train in order to steal a ride, and fell under car wheels. He was run over and fatally injured.

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On the evening of July 16, 1908, at Madisonville, Ky., on Henderson Division, John Mitchell was struck and killed by a train while attempting to drive over crossing ahead of the train.

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On the night of July 18, 1908, the remains of Milt Williams were

found on the track at East Bernstadt, Ky., on Kentucky Division. It is supposed that he had been run over by some train while asleep or drunk on track.

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July 27, 1908, the remains of an unknown man were found on track of Butler, Ky., on Kentucky Division. He had evidently been run over by some train.

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July 27, 1908, George Marshall (colored) was found on the track at Paris, Ky., on Kentucky Division, in an intoxicated condition with injuries about the head, which resulted in his death later in the day. It is supposed that he was struck by some train.

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On the evening of July 28, 1908, Mabel Kimble, a small girl, was struck and killed by passenger train on highway crossing at St. Matthews, Ky., on Cincinnati Division.

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On the night of August 8, 1908, a colored girl about four years old, named Ora Bradshaw, was struck by passenger train and killed on street crossing at Hopkinsville, Ky., on Henderson Division.

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James Tuggle, while trespassing in more or less intoxicated condition, was struck by a train near Wallsend, Ky., on Cumberland Valley Division, about one o'clock on the morning of August 16, 1908, and killed.

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On September 2, 1908, an old man named Robert Byrd, was struck by freight train and fatally injured at Pleasant View, Ky., on Knoxville Division.

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On the night of September 5, 1908, Charles Johnson (colored), laborer working in coal bin at Paris, Ky., on Kentucky Division, was fatally injured in some manner not yet explained.

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On September 8, 1908, Jerry Mansfield (colored), track laborer, was struck and killed by freight train at Horse Cave, Ky., on Main Stem, First Division.



Latham Horn (colored), was fatally injured at Auburn, Ky., on Memphis Line on September 16, 1908. It is supposed the injuries were received by jumping or falling from excursion train.

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September 16, 1908, H. L. Cole, fireman, was run over and killed at Latham, Ky., on Henderson Division. It is supposed that he went to sleep on track.

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On the night of September 16, 1908, Ed Russell (colored), trespasser, was killed by logs rolling off freight car while train was switching at Loretto, Ky., on Lebanon Branch.

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On the night of September 21, 1908, Charles Lechleiter, brakeman, was fatally injured by being caught between couplers of freight cars while train was switching at Mt. Vernon, Ky., on Lebanon Branch.

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On the morning of September 21, 1908, an old man named Matthew Keller, trespasser, was struck and killed by passenger train at Island, Ky., on our Owensboro and Nashville Division.

---

On the afternoon of October 11, 1908, a youth named Bud Price was run over and killed by engine of freight train while he was asleep or drunk on track near Sparks' Quarry, Ky., on Lebanon Branch.

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On the night of October 12, 1908, Mart Byrley, a miner, was found on the track near Kensee, Ky., on Knoxville Division with fatal injuries, apparently received by being run over by some freight train.

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On the evening of October 14, 1908, an unknown colored woman was run over and killed by freight cars which were moved on siding at East Louisville, Ky., on Cincinnati Division. It is supposed that she had been sitting or lying down on the track between the cars.

On the morning of October 16, 1908, Charles Hood, trespasser, was fatally injured while attempting to board freight train at Dortha, Ky., on Kentucky Division.

On the morning of October 27, 1908, an unknown white man was found on track near Flat Lick, Ky., on Cumberland Valley Division, with injuries that resulted in his death later in the day. It is supposed that he was struck or run over by some train while asleep on the track.

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On the evening of October 31, 1908, Steve Surgner, non-employee, was struck and fatally injured by freight train near North Jellico, Ky., on Cumberland Valley Division.

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On the morning of November 3, 1908, Edward Carr, trespasser, reported to be a deaf mute, was struck and fatally injured by passenger train near Gaithers, Ky., on Main Stem, First Division.

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On the morning of November 11, 1908, Stephen Smith, trespasser, was found on track at Highland Park, Ky., on Main Stem, First Division. It is supposed that he was run over by some freight train while trespassing on the track in a drunken condition.

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On November 26, 1908, a youth, Jesse Samson, was fatally injured while attempting to jump on a freight train at Twin Tunnel, Ky., on O. & N. Division.

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On December 10, 1908, J. S. Smiley was killed at Lexington, Ky., on Lexington Branch. He jumped on one of a cut of cars which was being handled on tracks in Lexington Yard by C. & O. R'y yard engine, and was struck by scale box and knocked under cars.

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December 14, 1908, Lawrence Van Meter, colored boy, trespasser, was killed at Louisville, Ky., on Main Stem, First Division. He attempted to jump on pilot of one of a string of five engines which were being handled light, but slipped and fell under the wheels.

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On December 14, 1908, Grover Blackwell, a trespasser, was fatally injured by being struck by some train at Pineville, Ky., on Cumberland Valley Division.

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On the night of December 20, 1908, James Hill, trespasser, was

found on track at Henderson, Ky., on Henderson Division, with injuries which resulted in his death some hours later. He had apparently been run over by cars which were being switched on yard track.

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On December 26, 1908, William Beasley, colored, trespasser, was found on track, fatally injured, at Hazel Patch, Ky., on Kentucky Division. It is supposed that he jumped from some train on which he was stealing a ride.

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On December 29, 1908, C. C. Hensley, of East Bernstadt, Ky., was struck and instantly killed by train No. 27, near Emanuel, Ky., on Cumberland Valley Division.

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On December 27, 1908, a portion of passenger train No. 7 split switch at Sulphur, Ky., on Cincinnati Division, and some of the cars ran into siding. No one on the train was injured, but the cars which ran in on siding struck a hand-car, killing a section laborer, named William Wright.

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#### MISCELLANEOUS, 1908.

##### ASHLAND COAL & IRON R'Y. CO.

Jno. Purtle, brakeman, age 52, while coupling air hose between A. C. & I. car No. 4 and V. R. R. car No. 7200, had left arm and leg cut off, resulting in death.

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##### LOUISVILLE & ATLANTIC R'Y. CO.

Brakeman, Dillard Dalton, was killed on morning of April 17, 1908, in a freight wreck between Kings and Rice Station.

## LOUISVILLE &amp; EASTERN R.Y. CO.

Elias Jenkins, Lyndon, evening May 10, 1908. Electric car running 30 miles per hour. Man thought to have been intoxicated or asleep.

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## LOUISVILLE, HENDERSON &amp; ST. LOUIS R.Y. CO.

Through freight train No. 163 of Nov. 18, 1908, while attempting to couple cars at South Louisville, brakeman William Newton was caught between the cars and injured to such an extent that he died a few hours afterwards. The accident was caused by Mr. Newton attempting to go between the cars on the inside of a sharp curve as they were coming together to be coupled, and was caught.

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## MOBILE &amp; OHIO R.Y. CO.

Unknown man killed at Laketon December 11, 1908.

Section Foreman J. S. Allen killed on December 31, 1908. This man met his death by an Illinois Central train striking his hand car.

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## OHIO &amp; KENTUCKY RAILWAY CO.

Steve Crawford, age about 21 years, who was employed as section hand by O. & K. Ry., Company was struck by passenger train on February 12, 1908, and instantly killed. Crawford together with other section employes had just alighted from a work train, and the passenger train was closely following and at a very slow rate of speed, probably two or three miles per hour, when Crawford without any apparent reason, attempted to step on the pilot of the passenger train (it is supposed to ride for a few rail lengths), when he missed his footing and fell in front of the engine which passed over him, kill-

ing him instantly. He had been employed by O. & K. Ry. Company for about five months.

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On February 15, 1908, about four o'clock p. m., mixed train No. 33, west bound, consisting of about seventeen freight and two passenger cars, at a point near Frozen station in Breathitt county, Ky., struck Mrs. Jane Kilburn, age about 63 years, and death resulted some time after midnight, February 16th. It appears that the woman was trying to drive a cow away from the track and got too close to the cars, by which she was knocked down and injured between cars and platform. Train was slowing up for stop at station, and ran about two car lengths after Mrs. Kilburn was struck. It is said that the engineer and fireman both saw the woman, and made every possible effort to stop train, but could not do so in time to prevent accident.

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#### SOUTHERN R'Y. CO. IN KENTUCKY, 1908.

On April the 8th, 1908, James Mackey, white, age 41, residence Alton, Ky., was lying across a rail asleep and evidently intoxicated, freight train extra 672 east struck him in the left side knocking him from the rail, bruising left side of body, left side of head and left hand. This accident happened at Saffells, Ky., near Lawrenceburg, Ky., about 2:30 p. m. Mackey was picked up and taken to Lawrenceburg where he died at 8:34 p. m., the same date, from the above injuries.

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At 2:00 a. m., April 16, 1908, in Youngtown Yards, Louisville, Ky., William Mayer, car repairer, white, age 30, residence 603 28th Street, Louisville, Ky., was run over by a freight car and killed instantly.

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Charles L. Gray, white, age 29, residence 2005 Olmstead Avenue, Louisville, Ky., was found dead along side of tracks at 18th & Magnolia Streets, Louisville, on July 2, 1908, at 11:37 p. m. The supposition is that train No. 43 of the 2nd struck him as the indications were that he was struck by some train.

There was found upon track one mile west of Buechel, Ky., on July 22, 1908, about 7:00 a. m., the body of an unknown negro man which had been run over by some train and mangled considerable, about 26 years old.

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At 6:00 a. m., October 24, 1908, Clay Cornelias, white, age 22, residence Harrodsburg, Ky., was found dead under first railroad bridge west of Salvisa, Ky. He came to his death by falling off of the bridge to the ground, a distance of thirty feet.

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On October 31, 1908, at 10:40 p. m., the remains of an unknown negro man were found on K. & I. B. & R. R. Co.'s tracks at 14th Street and Canal, Louisville, Ky. It is the supposition that train No. 2 of that date, which passed that point at 9:37 p. m., ran over and killed him, as blood spots and pieces of flesh were found on train. No eye witness to the accident.

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At 6:00 a. m., December 29, 1908, Nelson King, colored, found the remains of an unknown colored man on "Y" track at Lawrenceburg, Ky., the body had been run over by some train and cut in twain about the waist line. The investigation develops that it was the body of George Adams, colored, age about 39, residence near Jeffersontown, Ky.



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# STATISTICS

1909

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**\*Note:** For interstate carriers, figures herein represent entire line.

**\*Note:** Gross and net earnings of each Company shown in supplement to this report.





## FRANKFORT & CINCINNATI RAILWAY CO.

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### HISTORY.

Organized February 27, 1897, under laws of Kentucky.

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### DIRECTORS.

C. Bowles, Frankfort, Ky.  
D. W. Lindsey, Jr., Frankfort, Ky.  
C. W. Hay, Frankfort, Ky.  
Geo. B. Harper, Frankfort, Ky.  
W. O. Parrick, Georgetown, Ky.

### OFFICERS.

Geo. B. Harper, President, Frankfort, Ky.  
D. W. Lindsay, Jr., Secretary, Frankfort, Ky.  
C. Bowles, Treasurer, Frankfort, Ky.

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Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock, common. Number of shares authorized 1,600. Par value of one share \$25.00. Total par value authorized \$40,000. Total par value not held by respondent corporation \$40,000. Dividends declared during the year—None.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky, as follows:

### EXPRESS COMPANIES.

Adams Express Co.—Temporary and terminable agreement under which said express company operates line for express business, paying one-half wages of messenger and after deducting \$40.00 per month for other expenses, divides balance of revenue accruing from business on this line on basis of 50 per cent to express company and 50 per cent to railroad company.

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### MAILS.

Usual agreement with U. S. Government for transportation of mail on basis of ascertained average weight for a distance of 42.37 miles.

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### TELEGRAPH COMPANIES.

Postal Telegraph Company—Contract extending to year 1915, under which Postal Company constructs and maintains line on railroad right of way, maintaining one wire for exclusive railroad use. Pays railroad company all local telegraph tolls; 25 per cent of through tolls from and to local stations, and \$500.00 per annum in free business for railroad company.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

| COMMODITY                                 | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|---|---|--|----------------------------------|
| <b>Products of agriculture:</b>           |   |  |                                  |
| Grain -----                               | 5,730                                       | 6,600  | 12,330                           |
| Flour -----                               | 15  | 20   | 35                               |
| Other mill products -----                 | 421   | 405  | 826                              |
| Hay -----                                 | 1,730                                       | 40   | 1,770                            |
| Tobacco -----                             | 3,104                                       |  | 3,104                            |
| Fruits and vegetables -----               | 24  | 41   | 65                               |
| Other products of agriculture -----       | 282   | 489  | 771                              |
| <b>Total -----</b>                        | <b>11,306</b>                               | <b>7,595</b>   | <b>18,901</b>                    |
| <b>Products of animals:</b>               |   |  |                                  |
| Live stock -----                          | 2,795                                       | 444  | 3,239                            |
| <b>Total -----</b>                        | <b>2,795</b>                                | <b>444</b>   | <b>3,239</b>                     |
| <b>Products of mines:</b>                 |   |  |                                  |
| Bituminous coal -----                     | 721   | 37,295   | 38,016                           |
| Stone, sand and other like articles ----- | 6,541                                       | 1,680  | 8,221                            |
| Other products of mines -----             | 552   | 1,352  | 1,904                            |
| <b>Total -----</b>                        | <b>7,814</b>                                | <b>40,327</b>  | <b>48,141</b>                    |
| <b>Products of forests:</b>               |   |  |                                  |
| Lumber -----                              | 5,254                                       | 6,551  | 11,805                           |
| <b>Total -----</b>                        | <b>5,254</b>                                | <b>6,551</b>   | <b>11,805</b>                    |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
 (Company's Material Excluded.)  
 —Continued.

| COMMODITY   | Freight Originating on this<br>Road—Whole Tons | Freight Received from Con-<br>necting Roads and Other<br>Carriers—Whole Tons | Total Freight Tonnage—<br>Whole Tons |
|---|--|--|--------------------------------------|
| <b>Manufactures:</b>  |  |  |                                      |
| Petroleum and other oils -----                                | 121  | 1,428  | 1,549                                |
| Sugar -----   |  | 89   | 89                                   |
| Castings and machinery -----                                  | 144  | 192  | 336                                  |
| Cement, brick and lime -----                                  | 426  | 3,684  | 4,110                                |
| Wines, liquors and beers -----                                | 2,178  | 1,472  | 3,650                                |
| Other manufactures -----                                      | 964  | 2,248  | 3,212                                |
| <b>Total -----</b>  | <b>3,833</b>                                   | <b>9,113</b>   | <b>12,946</b>                        |
| Merchandise -----   | 4,105  | 4,041  | 8,146                                |
| Miscellaneous: Other commodities not<br>mentioned above ----- | 2,077  | 1,095  | 3,172                                |
| <b>Total tonnage—State -----</b>                              | <b>37,184</b>                                  | <b>69,166</b>  | <b>106,350</b>                       |
| <b>Total tonnage—entire line----</b>                          | <b>37,184</b>                                  | <b>69,166</b>  | <b>106,350</b>                       |

## LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY.

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HISTORY.

Organized under laws of Kentucky. (Acts of Legislature approved March 5, 1850. Acts 1849-50, page 427, and numerous amendments.)

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## DIRECTORS.

August Belmont, New York, N. Y.  
Attila Cox, Louisville, Ky.  
Warren Delano, Jr., New York, N. Y.  
Alexander Hamilton, Petersburg, Va.  
Michael Jenkins, Baltimore, Md.  
D. P. Kingsley, New York, N. Y.  
G. M. Lane, Boston, Mass.  
W. G. Oakman, New York, N. Y.  
W. G. Raoul, Atlanta, Ga.  
Edward W. Sheldon, New York, N. Y.  
Milton H. Smith, Louisville, Ky.  
H. Waters, Baltimore, Md.  
John I. Waterbury, New York, N. Y.

## OFFICERS.

Milton H. Smith, President, Louisville, Ky.  
Joseph H. Ellis, Secretary, Louisville, Ky.  
William W. Thompson, Treasurer, Louisville, Ky.



## OUTSIDE OPERATIONS.

| DESIGNATION  | CHARACTER OF BUSINESS   | TITLE—(Owned<br>Leased Etc.) | STATE OR TERRITORY                  |
|--|---|------------------------------|-------------------------------------|
| Public Toll Bridge Service (New-<br>port & Cincinnati Bridge)----- | Foot and Wagon Toll Bridge-----   | Owned                        | Kentucky and Ohio.                  |
| West Pascagoula Creosote Works-----                                | Creosoting Timber -----   | Owned                        | Mississippi.                        |
| Tennessee River Transfer -----                                     | Wharfage and Tracks Transferring<br>Freight between cars and boats----- | Owned                        | Tennessee.                          |
| Wharfage and Storage at Pensa-<br>cola, Fla. -----                 | Wharf, Dock and Storage Ware-<br>houses -----                           | Owned                        | Florida.                            |
| Dining and Special Car Service----                                 | Dining Cars -----   | Owned                        | Over entire Main<br>Line of System. |



Capital stock:—Number of shares authorized 600,000 (common). Par value of one share \$100. Total par value authorized \$60,000,000. Total par value outstanding \$60,000,000. Total par value not held by respondent corporation \$60,000,000. Dividends declared during the year, 2 1-2%, \$1,500,000; 3%, \$1,800,000.

#### REMARKS.

\$30,125,832 realized on common stock issued for cash, \$19,327,534 realized on common stock issued for dividends. The \$19,327,534 "for dividends" represents cash realized on stock issued for the reason that the stockholders, instead of taking those dividends in cash, used the amounts for the extension or improvement of the property.

## RAILWAY STOCKS OWNED.

## 1. ACTIVE CORPORATIONS.

| NAME OF CORPORATION AND SECURITY  | PAR VALUE OF STOCKS OWNED,<br>NOT HELD IN SINKING<br>OR OTHER FUNDS |                | DIVIDENDS DECLARED |            | VALUATION<br>OF<br>STOCKS OWNED |
|---|---|----------------|--------------------|------------|---------------------------------|
|   | Unpledged   | Pledged        | Rate               | Amount     |                                 |
| Stocks of respondent corporation. "A"   |   |                |                    |            |                                 |
| Stocks of corporations whose property<br>forms a part of the operating system<br>of respondent corporation: |   |                |                    |            |                                 |
| Elkton & Guthrie Railroad-----  | \$17,275 00   |                |                    |            | \$15,175 00                     |
| Nashville & Decatur R. R.-----  | 1,979,600 00  |                |                    |            | 1,964,826 01                    |
| South & North Ala. R. R., Pref-----   |   | 2,000,000 00   |                    |            | 2 50                            |
| South & North Ala. R. R., Com-----  | 7,533 33  | 1,127,400 00   |                    |            | 382 50                          |
| Louisville & Nashville Terminal Co.---  | 100,000 00  |                |                    |            | 20 00                           |
| Lexington Union Station Co., Pref.---   | 25,000 00   |                |                    | \$1,000 00 | 24,995 00                       |
| Lexington Union Station Co., Com.---  | 5,000 00  |                |                    |            | 5 00                            |
| Woodstock & Blocton Ry.-----  | 120,000 00  |                | 5%                 | 6,000 00   | 120,348 47                      |
| Total "A" -----   | \$2,254,403 33  | \$3,127,400 00 |                    | \$7,000 00 | \$2,125,754 48                  |

RAILWAY STOCKS OWNED.  
—Continued.  
1. ACTIVE CORPORATIONS.

| NAME OF CORPORATION AND SECURITY   | PAR VALUE OF STOCKS OWNED<br>NOT HELD IN SINKING<br>OR OTHER FUND |              | DIVIDENDS DECLARED |            | VALUATION<br>OF<br>STOCKS OWNED |
|--|---|--------------|--------------------|------------|---------------------------------|
|  | Unpledged   | Pledged      | Rate               | Amount     |                                 |
| Stocks of Corporations whose property does<br>not form a part of the operating<br>system of respondent corporation:<br>"B" |   |              |                    |            |                                 |
| Augusta Belt Ry-----   | \$32,500 00   |              |                    |            | \$32,275 67                     |
| Augusta Union Station Co-----  | 12,500 00   |              | 20c per<br>Share   | \$25 00    | \$625 00                        |
| Augusta & Summerville Railroad-----  | 25,000 00   |              |                    |            | 9,527 50                        |
| Central Transfer Ry. & Storage Co-----   | 25,000 00   |              | 4%                 | 1,000 00   | 11,354 65                       |
| Cincinnati Inter-Terminal Rd., Pref-----   | 123,000 00  |              |                    | 3,087 67   | 123,000 00                      |
| Chicago, Indianapolis & Louisville Ry.,<br>Pref.-----  |   | 1,936,700 00 | 2%                 | 77,468 00  | -----                           |
| Chicago, Indianapolis & Louisville Ry.,<br>Common-----   | 5,000 00  | 4,898,450 00 | 3½%                | 153,232 81 | 6,008,533 62                    |
| Frankfort & Cincinnati Ry-----   | 40,000 00   |              |                    |            | 201,333 58                      |

|  |                |                 |       |              |                 |
|--|----------------|-----------------|-------|--------------|-----------------|
| Louisville, Henderson & St. Louis Ry., Pref. ----- | 776,081 03     | -----           | ----- | -----        | 255,954 50      |
| Louisville, Henderson & St. Louis Ry., Com. -----  | 6,631,385 50   | -----           | ----- | -----        | 263,834 23      |
| Lexington Terminal Railroad of Ga. -----           | 3,300 00       | -----           | ----- | -----        | 3,300 00        |
| Memphis Railroad Terminal Co. -----                | 10,000 00      | -----           | ----- | -----        | 10,000 00       |
| Madisonville, Hartford & Eastern Ry. -----         | 50,000 00      | -----           | ----- | -----        | 10 00           |
| Milledgeville Ry. -----                            | 15,000 00      | -----           | ----- | -----        | 17,500 00       |
| Missouri & Ills. Bridge & Belt Co. -----           | 13,000 00      | -----           | ----- | -----        | 13,000 00       |
| Monroe Railroad -----                              | 50,000 00      | -----           | ----- | -----        | 5 00            |
| Nashville, Chatta. & St. Louis Ry. -----           | 1,676,100 00   | 5,501,500 00    | 5%    | 358,880 00   | 6,597,525 25    |
| Terminal Rd. Assn. of St. Louis -----              | 205,800 00     | -----           | ----- | -----        | 10 00           |
| Total "B" -----                                    | \$4,693,666 53 | \$12,336,650 00 | ----- | \$593,693 48 | \$13,547,789 00 |
| Total "A" and "B" active -----                     | \$6,948,074 86 | \$15,464,050 00 | ----- | \$600,693 48 | \$15,673,543 48 |

RAILWAY STOCKS OWNED.  
—Concluded.  
11. INACTIVE CORPORATIONS.

| NAME OF CORPORATION   | NAME OF CORPORATION | TOTAL PAR OF STOCK OUTSTANDING | PAR VALUE OF STOCKS OWNED |              | VALUATION OF STOCKS OWNED |
|---|---------------------|--------------------------------|---------------------------|--------------|---------------------------|
|   |                     |                                | Unpledged                 | Pledged      |                           |
| Stocks of Corporations whose property forms a part of the operative system of respondent Corporation: "C" |                     |                                |                           |              |                           |
| Bay Minette & Fort Morgan Rd.   |                     | \$50,000 00                    | \$50,000 00               |              | \$5 00                    |
| Long Branch Coal Railroad   |                     | 50,000 00                      | 50,000 00                 |              | 10 00                     |
| Morganfield & Atlantic Railroad   |                     | 50,000 00                      | 50,000 00                 |              | 10 00                     |
|   | Unified 50          |                                |                           |              |                           |
| Owensboro & Nashville Ry.   | yr. G. B'd's.       | 1,156,524 99                   | 193,124 99                | \$963,400 00 | 308,330 25                |
| Pine Mountain Railroad  |                     | 10,000 00                      | 10,000 00                 |              | 10 00                     |
| Swan Creek Railway  |                     | 50,000 00                      | 50,000 00                 |              | 10 00                     |
| Total "C"   |                     | \$1,366,524 99                 | \$403,124 99              | \$963,400 00 | \$308,375 25              |

| Stocks of Corporations whose property<br>does not form a part of the opera-<br>ting system of respondent Corpora-<br>tion: "D" |  |                |              |  |  |  |              |  |              |
|--|--|----------------|--------------|--|--|--|--------------|--|--------------|
|  |  |                |              |  |  |  |              |  |              |
| Goodlettsville & Greenbrier Railroad--   |  | \$10,000 \$0   | \$10,000 00  |  |  |  |              |  | \$10 00      |
| South Carolina & Augusta Railroad--  |  | 5,000 00       | 5,000 00     |  |  |  |              |  | 860 08       |
| Total "D" -----  |  | \$15,000 00    | \$15,000 00  |  |  |  |              |  | \$870 08     |
| Total "C" and "D" inactive----   |  | \$1,381,524 99 | \$418,124 99 |  |  |  | \$963,400 00 |  | \$309,245 33 |

This company also owns the following stocks representing properties which have been charged to Cost of Road, and which stocks are deposited with Trustees as Collateral for Unified Fifty-Year 4% Gold Bonds and for New Orleans, Mobile & Texas Division First and Second Mortgage Bonds:

| STOCKS                               | Collateral under<br>Unified Mortgage | Collateral under<br>N O M & T Mortg |
|--------------------------------------|--------------------------------------|-------------------------------------|
| Henderson Belt Railroad -----        | \$19,750 00                          |                                     |
| Southeast & St. Louis Railway----    | 980,000 00                           |                                     |
| Pensacola Railroad -----             | 285,000 00                           |                                     |
| Louisv., Cin. & Lexington Ry., Pref. | 1,500,000 00                         |                                     |
| Louisv., Cin. & Lexington Ry., Com.  | 985,000 00                           |                                     |
| Alabama Mineral Railroad-----        | 1,969,000 00                         |                                     |
| Louisville Railway Transfer-----     | 100,000 00                           |                                     |
| Mobile & Montgomery Railway----      | 2,939,700 00                         |                                     |
| Shelby Railroad -----                | 589,256 00                           |                                     |
| Birmingham Mineral Railroad----      | 2,412,600 00                         |                                     |
| New Orleans, Mobile & Texas Ry.      | 3,985,000 00                         |                                     |
| Nashville, Florence & Sheffield Ry.  | 615,000 00                           |                                     |
| Pontchartrain Railroad -----         | -----                                | \$711,800 00                        |
| Henderson Bridge Company -----       | 501,000 00                           |                                     |
|                                      | <hr/> \$16,881,306 00                | <hr/> \$711,800 00                  |

These properties have been deeded to the L. & N. R. R. Co., with the exception of the Henderson Belt Railroad, Southeast & St. Louis Railway, and Pontchartrain Railroad.

# ROAD ACQUIRED FOR OPERATION THROUGH LEASE OR OTHER AGREEMENT.

| NAME OF OWNING COMPANY            | Miles of Line | LEASE OR AGREEMENT |           |   |
|-----------------------------------|---------------|--------------------|-----------|---|
|                                   |               | Date               | Term      | Concise Summary of Provisions   |
| Elkton & Guthrie Railroad (Ky.)   | 10.92         | Dec. 1, 1904       | 25 Years  | L. & N. to operate road and after deducting expenses to pay over annually net earnings to E. & G. Railroad Co.  |
| Glasgow Railway (Ky.)-----        | 10.50         | Jan. 8, 1907       | 5 Years   | L. & N. to operate road and after deducting expenses to pay over annually net earnings to Glasgow Ry. Co.   |
| Nashville & Decatur Railroad----- | 118.97        | July 1, 1900       | 999 Years | L. & N. operates property of the N. & D. Railroad Co. and receives all income therefrom, and guarantees to pay to stockholders $7\frac{1}{4}\%$ dividend upon Capital stock of N. & D. Railroad Co., as rental. Dividend payable semi-annually. |
| South & North Alabama Railroad    | 200.53        | -----              | -----     | The L. & N. Railroad Co. being the owner of practically all of the Capital Stock operates the road for account of the South & North Alabama Railroad Co.  |



ROAD ASSIGNED TO ANOTHER CARRIER FOR OPERATION  
THROUGH LEASE OR OTHER AGREEMENT.

| NAME OF OPERATING COMPANY                  | TERMINI         |                   | Miles of Line | LEASE OR AGREEMENT |          |  |
|--|-----------------|-------------------|---------------|--------------------|----------|--|
|  | From            | To                |               | Date               | Term     | Concise Summary of Provisions  |
| Nashville, Chattanooga & St. Louis Ry. Co. | Paducah ----Ky. | Lexington -Tenn.  | 118.60        | Dec. 14, 1895      | 99 Years | N. C. & St. L. Ry. operates property paying as rental therefor 5% per annum on cost of property. |
|  | Memphis --Tenn. | Perryville -Tenn. | 135.60        |                    |          |  |
|  |                 |                   | 254.20        |                    |          |  |
| Ohio Valley Ry.                            | Gracey -----Ky. | Princeton ---Ky.  | 20.70         | July 1, 1892       | 99 Years | O. V. Ry. Co. operates property paying a fixed rental of \$12,039.70 per annum.                  |

STATEMENT ACCOUNTING FOR DIFFERENCE IN MILE-  
AGE REPORTED FOR THE YEAR ENDED JUNE 30,  
1908, AND THAT REPORTED FOR THE  
YEAR ENDED JUNE 30, 1909.

Mileage as reported June 30, 1908..... 4,365.20

July 1, 1908—Additions:

|  |      |       |
|--|------|-------|
| New Orleans & Mobile Div., remeasurement..                             | .63  |       |
| Atlanta Div., old Main Line, remeasurement..                           | .25  |       |
| Kentucky Division, remeasurement.....                                  | 1.05 |       |
|  |      | <hr/> |
| Classification 1a .....  | 1.93 |       |
| Atlanta Div., old, Murphy Br., remeasurement..                         | .06  |       |
| Chesapeake & Nashville Div., Hartsville<br>Branch, remeasurement ..... | .02  |       |
| Knoxville Div., Wilton Br., remeasurement....                          | .07  |       |
|  |      | <hr/> |
| Classification 1b .....  | .15  |       |
| South & North Alabama Railroad, remeasurement..                        | .03  |       |
| Classification 4.  |      |       |
| Nashville & Decatur Div., remeasurement.....                           | .02  |       |
| Pensacola & Atlantic Div., remeasurement.....                          | .10  |       |
| Cumberland Valley Div., omitted.....                                   | 5.70 |       |
| Classification 5 .....   | 5.82 |       |
|  |      | <hr/> |
|  | 7.93 |       |

Deductions:

|   |      |       |
|---|------|-------|
| Main Stem, remeasurement .....  | .12  |       |
| Knoxville Div., remeasurement.....  | .19  |       |
| Cumberland Valley Div., remeasurement..   | .19  |       |
|   |      | <hr/> |
| Classification 1a .....   | .50  |       |
| Chesapeake & Nash. Div., remeasurement  | .48  |       |
| Nashville, Florence & Sheffield Div., West<br>Point Branch, remeasurement ..... | .07  |       |
| Ala.Min.Div., O'Connor Br., part taken up                                       | .87  |       |
|   |      | <hr/> |
| Classification 1b .....   | 1.42 |       |

|  |       |          |
|--|-------|----------|
| Nashville & Decatur Div., remeasurement  | .01   |          |
| L. & N. Terminal Co., remeasurement  | .08   |          |
| Classification 5   | .09   | 2.01     |
|  |       | <hr/>    |
| Net addition as of July 1, 1908  |       | 5.92     |
|  |       | <hr/>    |
| Mileage July 1, 1908, to August 31, 1908, inclusive  |       | 4,371.12 |
|  |       | <hr/>    |
| September 1, 1908—Add:   |       |          |
| Pennington Branch, constructed, not heretofore reported, Classification 2                          | 1.99  |          |
| Black Mountain Railway, Classification 5   | 10.86 | 12.85    |
|  |       | <hr/>    |
| Mileage Sept. 1, 1908, to Nov. 1, 1908, inclusive  |       | 4,383.97 |
| November 1, 1908—Deduct:   |       |          |
| Alabama Mineral Division, Wewoka Branch, taken up, Classification 1b                               |       | 1.37     |
|  |       | <hr/>    |
| Mileage Nov. 1st to 9th, 1908  |       | 4,382.60 |
| November 9, 1908—Add:  |       |          |
| Knoxville Division, Pine Mountain Railroad, West; constructed, Classification 2                    |       | 21.09    |
|  |       | <hr/>    |
| Mileage Nov. 9th to Dec. 1, 1908   |       | 4,403.69 |
| December 1, 1908—Add:  |       |          |
| Birmingham Mineral Division, Kennedy Creek Branch, constructed, Classification 1b                  |       | 2.00     |
|  |       | <hr/>    |
| Mileage Dec. 1, 1908, to March 1, 1909   |       | 4,405.69 |
| March 1, 1909—Deduct:  |       |          |
| Nashville, Florence & Sheffield Division, Tenn. & Ala. Mineral Branch, taken up, Classification 1b |       | 7.32     |
|  |       | <hr/>    |
| Mileage March 1, 1909, to June 30, 1909, inclusive   |       | 4,398.37 |

CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS  
WITHIN THE STATE OF KENTUCKY.

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COAL COMPANIES

Scanlon Creek Coal Co.—Contract dated March 1, 1909, for indefinite period. Transportation of about 15,000 tons of coal from mines in the vicinity of Pineville, Ky., to coal yard in Louisville, Ky.

To pay transportation charges on coal, as and when same is removed from said coal yard.

Straight creek Coal & Coke Company.—Contract dated April 2, 1909, for indefinite period. Transportation of about 35,000 tons of coal from mines in the vicinity of Pineville, Ky., to coal yard in Louisville, Ky.

To pay transportation charges on coal as and when same is removed from said coal yard.

Clear Creek Coal Company.—Contract dated April 15, 1909, terminates November 30, 1909. Transportation of about 3,500 tons of coal from points on the Chenoa Branch of L. & N. Ry. Co. to coal yard in Louisville, Ky.

To pay transportation charges on coal as and when same is removed from coal yard, and on October 31, 1909, pay transportation charges on one-half of the coal, then in said yard, and on November 30, 1909, pay the balance of the transportation charges due on all coal transported.

Trosper Coal Company and C. B. Chappel.—Contract dated April 23, 1909, terminates November 30, 1909. Transportation of about 750 tons of coal from Artemus, Ky., to Louisville, Ky.

To pay transportation charges on coal as and when removed from coal yard, and on October 31, 1909, pay transportation charges on one-half of the coal then in said yard, and on November 30, 1909, pay the balance of transportation charges on all coal transported.

Schildt-Buddeke Coal Co. and Straight Creek Coal & Coke Co.—

Contract dated June 8, 1909, terminates November 30, 1909. Transportation of about 8,000 tons of coal from mines in vicinity of Pineville, Ky., to coal yard in Louisville, Ky.

To pay transportation charges on one-half of the coal then in the said yard and on November 30, 1909, pay the balance of the transportation charges on all coal transported.

Snead & Meguire Coal Company.—Contract dated June 29, 1909, terminates November 30, 1909. Transportation of about 2,500 tons of coal from mines at Four Mile, Ky., Pineville, Ky., and Habersham, Tenn., to coal yard in Louisville, Ky.

To pay transportation charges on coal as and when same is removed from said coal yard, and on October 31, 1909, to pay transportation charges on one-half of the coal then in said yard, and on November 30, 1909, pay the balance of the transportation charges on all coal transported.

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## FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.

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No record of items reported.

MOUNTAIN CENTRAL RAILWAY COMPANY.

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HISTORY.

Organized August, 1905.

Company is not incorporated, and is operated as a separate branch of the Swann-Day Lumber Company, of Clay City, Kentucky.

DIRECTORS.

Floyd Day, Winchester, Ky.

J. C. M. Day, Winchester, Ky.

Luther Loving, Clay City, Ky.

H. A. Paynter, Lexington, Ky.

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Note.—Terms of above are continuous.

OFFICERS.

President, Floyd Day, Winchester, Ky.

Secretary, Luther Loving, Clay City, Ky.

Treasurer, A. W. Kratzer, Lexington, Ky.

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Transportation corporations controlled.—None.

## THE CHESAPEAKE & OHIO RAILWAY COMPANY.

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### HISTORY.

Organized under the laws of Virginia and West Virginia. Original corporation, Chesapeake & Ohio Railway Company, was organized under the Acts of the State of Virginia of March 1, 1867, and under the Acts of the State of West Virginia of February 26, 1867.

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### DIRECTORS.

Decatur Axtell, Richmond, Va.  
John W. Castles, New York, N. Y.  
James H. Dooley, Richmond, Va.  
Edwin Hawley, New York, N. Y.  
Henry E. Huntington, New York, N. Y.  
Geo. W. Stevens, Richmond, Va.  
Frederick W. Scott, Richmond, Va.  
Frank Trumbull, New York, N. Y.  
Frank A. Vanderlip, New York, N. Y.

### OFFICERS.

Geo. W. Stevens, President, Richmond, Va.  
Decatur Axtell, Vice President, Richmond, Va.  
James Stuart Mackie, Secretary, New York, N. Y.

# TRANSPORTATION CORPORATIONS CONTROLLED.

THE RAILROAD COMMISSION

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| NAME   | CONTROL         |                       |                    |  |  | Other Parties to Agreement<br>For Joint Control |
|--|-----------------|-----------------------|--------------------|--|--|---|
|  | How Established | Per Cent              | Per Cent of Income | If Indirect, name of Intermediary<br>Through Which Control<br>is Established |  |   |
| Cincinnati Interterminal R. R. Co. -----     | Sole            | Stock ownership 100 % | I                  | C. & C. El. R. R. & T. & B. Co.  |  |   |
| Cov. & Cin. El. R. R. & T. & B. Co. -----    | Sole            | Stock ownership 100 % | D                  | -----  |  |   |
| C. & O. Grain Elevator Co. -----             | Sole            | Stock ownership 100 % | D                  | -----  |  |   |
| Coal River Ry. Co. -----                     | Sole            | Stock ownership 100 % | D                  | -----  |  |   |
| Lexington Union Station Co. -----            | Joint           | Stock ownership 33 %  | D                  | -----  | L. & N. R. R. Co.<br>L. & E. R. R. Co.             |   |
| Louisville & Jeffersonville Bridge Co. ----- | Joint           | Stock ownership 33 %  | D                  | -----  | C. C. C. St. L. Ry. Co.<br>N. & W. Ry. Co., Sou.   |   |
| Norfolk & Portsmouth Belt Line R. R. -----   | Joint           | Stock ownership 14 %  | D                  | -----  | Ry. Co., N. Y. P. & N. R. R. Co., S. A.            |   |
| Norfolk Terminal & Transportation Co. -----  | Sole            | Stock ownership 100 % | D                  | -----  | L. Ry. Co., A. C. L. R. R. Co., N. & S. R. R. Co.  |   |
| Raleigh & Southwestern Ry. Co. -----         | Sole            | Stock ownership 100 % | D                  | -----  | P. B. & W. R. R. Co., B. & O. R. R. Co.            |   |
| Richmond-Washington Co. -----                | Joint           | Stock ownership 16 %  | D                  | -----  | A. C. L. R. R. Co., Sou. Ry. Co., S. A. L. Ry. Co. |   |
| Virginia Air Line Ry. Co. -----              | Sole            | Stock ownership 100 % | D                  | -----  |  |   |



## ROAD ACQUIRED THROUGH LEASE OR OTHER AGREEMENT.

| NAME OF OWNING COMPANY    | Miles of Line | LEASE OR AGREEMENT |  |   |
|---------------------------|---------------|--------------------|--|---|
|                           |               | Date               | Term   | Concise Summary of Provisions   |
| Kenney's Creek R. R. Co.- | 7.80          | June 17, 1891      | Unlimited -----  | Pay back to John Nuttall, owner, all branch earnings derived from his coal shipments, and one-third (1-3) of receipts from all traffic shipped by others. |
| Southern Railway Co. ---  | 9.00          | Dec. 23, 1890      | 99 yrs. and 1 mo. after March 1, 1891, renewable forever ----- | \$6,000 per year rental, payable quarterly.   |
| Sulphur Mines Co. of Va.- | 4.00          | July 1, 1895       | 5 years, agreement not renewed, but still in effect ---        | Earnings at \$1.00 per loaded car up to the amount of \$1,440.00 per annum.   |

Outside operations—Various ferry lines owned.

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ROAD ASSIGNED TO ANOTHER CARRIER THROUGH  
LEASE OR OTHER AGREEMENT.

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Nelson & Albermarle Ry. Co. from Esmont, Va., to Albemarle, Va., 5 miles, January 1, 1905; 10 years; said company to operate, maintain and furnish a certain amount of tonnage.

## CAPITAL STOCK.

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Capital stock: Common. Number of shares authorized: Unlimited. Par value of one share: \$100.00. Total par value authorized: Unlimited. Total par value outstanding: \$62,790,700.00. Total par value held by respondent corporation: In treasury, \$10,000.00; in sinking or other funds, none; total par value not held by respondent corporation: \$62,780,700.00, dividends declared during the year, rate 2%, amount \$125,561,400.00.

First preferred, par value of one share: \$100. Total par value outstanding: \$7,700.00. Total par value held by respondent corporation: In treasury, none; in sinking or other funds, none. Total par value not held by respondent corporation: \$7,700.00. Dividends declared during year: None.

Second preferred, par value of one share: \$100. Total par value outstanding: \$700.00. Total par value held by respondent corporation: In treasury, none; in sinking or other funds, none. Total par value not held by respondent corporation: \$700.00. Dividends declared during year: None.

Total, total par value outstanding: \$62,799,100.00. Total par value held by respondent corporation: In treasury, \$10,000.00; in sinking or other funds, none. Total par value not held by respondent corporation: \$62,789,100.00. Dividends declared during year: Amount \$125,561,400.00.

## REMARKS.

22,603 shares common stock issued for acquisition of securities. No cash realized.

605,304 shares common stock issued for reorganization and 84 shares preferred stock for same purpose realizing \$2,300,000.00 cash. This represents a cash assessment levied against the old stock deposited in the reorganization.

## RAILWAY STOCKS OWNED—1. Active Corporations.

| NAME OF CORPORATION AND SECURITY   | PAR VALUE OF STOCKS OWNED, NOT HELD IN SINKING OR OTHER FUNDS |              |       | Rate      | Dividends Declared | Valuation    |
|--|---|--------------|-------|-----------|--------------------|--------------|
|  | Unpledged   | Pledged      |       |           |                    |              |
| Stocks of Respondent Corporation:  | 10,000 00   | -----        | ----- | -----     | -----              | -----        |
| <i>Stocks of Corporations whose Property forms a Part of the System of Respondent Corporation:</i>         |   |              |       |           |                    |              |
| Covington & Cincinnati Electric R. R. & Tpr. & Bridge Co.---   | -----   | 1,500,000 00 | ----- | -----     | -----              | 146,987 00   |
| Cincinnati Interterminal R. R. Co. Preferred -----   | 31,500 00   | -----        | 4%    | 740 08    | -----              | 31,500 00    |
| Coal River Ry. Co.-----  | -----   | 100,000 00   | ----- | -----     | -----              | -----        |
| Louisville & Jeffersonville Bridge Co.   | 475,000 00  | -----        | ----- | -----     | -----              | 118,750 00   |
| Lexington Union Station Co., Pref.---  | 30,000 00   | -----        | 4%    | 1,039 25  | -----              | 30 000 00    |
| Lexington Union Station Co., Com.---   | 5,000 00  | -----        | ----- | -----     | -----              | -----        |
| <i>Stocks of Corporations whose Property does not form a Part of the System of Respondent Corporation:</i> |   |              |       |           |                    |              |
| Hocking Valley Ry. Co.-----  | 1,154,000 00  | -----        | 4%    | 46,160 00 | -----              | 1,211,700 00 |
| Norfolk & Portsmouth Belt Line R. R. Co.-----  | 7,200 00  | -----        | ----- | -----     | -----              | 7,200 00     |
| Raleigh & Southwestern Ry. Co.---  | -----   | 100,000 00   | ----- | -----     | -----              | -----        |
| Richmond-Washington Co.-----   | 445,000 00  | -----        | 4%    | 17,800 00 | -----              | 445,000 00   |
| Virginia Air Line Ry. Co., Pref.---  | -----   | 100,000 00   | ----- | -----     | -----              | 50,000 00    |
| Virginia Air Line Ry. Co., Com.---   | -----   | 400,000 00   | ----- | -----     | -----              | 131,062 50   |
| Total  | 2,157,700 00  | 2,200,000 00 | ----- | 65,739 33 | -----              | 2,172,199 50 |

## RAILWAY STOCKS OWNED—II. Inactive Corporations.

| NAME OF CORPORATION                      | NAME OF SECURITY | Total Par Value of Stock Outstanding | PAR VALUE OF STOCKS OWNED |                 | Valuation of Stocks Owned |
|--|------------------|--------------------------------------|---------------------------|-----------------|---------------------------|
|  |                  |                                      | edged                     |                 |                           |
| Coal River & Western Ry. Co.             | Capital stock    | \$ 1,004,000 00                      | \$1,004,000 00            | -----           | 100                       |
| The C. & O. Ry. Co. of Ky:               |                  |                                      |                           |                 |                           |
| Big Sandy Ry. Co.                        | Capital stock    | 100,000 00                           | -----                     | 100,000 00      | 100                       |
| Covington Short Route Tfr. Ry. Co.       | Capital stock    | 10,000 00                            | -----                     | 10,000 00       | 100                       |
| Eliz., Lexington & Big Sandy R. Co.      | Capital stock    | 3,524,900 00                         | 700 00                    | 3,501,525 00    | 100                       |
| Kentucky & South Atlantic Ry. Co.        | Capital stock    | 150,000 00                           | -----                     | 150,000 00      | 100                       |
| Kinniconick & Freestone R. R. Co.        | Capital stock    | 88,700 00                            | -----                     | 88,700 00       | 100                       |
| Maysville & Big Sandy R. R. Co.          | Capital stock    | 7,500,000 00                         | -----                     | 7,478,700 00    | 100                       |
| Ohio & Big Sandy R. R. Co.               | Capital stock    | 994,000 00                           | -----                     | 994,000 00      | 100                       |
| Ohio River & Charleston Ry. Co.          | Capital stock    | 50,000 00                            | -----                     | 50,000 00       | 100                       |
| Glen Jean, Lower Loup & Deepwater R. Co. | Capital stock    | 75,100 00                            | -----                     | 75,100 00       | 100                       |
| Greenbrier & New River R. R. Co.         | Capital stock    | 100,000 00                           | -----                     | 100,000 00      | 100                       |
| Guyandotte Valley Ry. Co.                | Capital stock    | 1,016,300 00                         | -----                     | 1,016,300 00    | 100                       |
| Total                                    | Capital stock    | \$14,613,000 00                      | \$1,004,700 00            | \$13,564,325 00 | 100                       |

## IMPORTANT CHANGES DURING THE YEAR.

Marrowbone branch, extension July 1, 1908.

Hellier to Beddow, Ky., 1.2 miles.

There were 4.6 miles of second main track between Maysville and Lawrence Creek, Ky. completed during year.

There were issued during year:

\$840,000 General Mortgage  $4\frac{1}{2}\%$  Bonds.

\$11,000,000 General Funding & Improvement Mtge. 5% Bonds.

There were retired:

\$9,750,000 General Equipment & Impvt. Mtge. 5% Bonds.

\$39,000 Greenbrier Ry. Mtge. 4% Bonds.

Stocks acquired during year:

Chesapeake & Ohio Ry. Co. common \$10,000; Va. Air Line Ry. Co. preferred \$100,000; Va. Air Line Ry. Co. common, \$400,000; Lexington Union Station Co. preferred \$30,000.

Bonds acquired:

C. & O. Ry. General Mtge. bonds \$90,000; Raleigh & Southwestern Ry. Mtge. bonds, \$80,000.

Bonds disposed of:

General Equipment & Improvement Mtge. \$9,750,000; Pott's Creek Branch Mtge. \$300,000; Big Sandy Ry. Mtge, \$771,000; Coal River Ry. \$150,000.

The book valuation of stocks owned of the New News Pub. Co. and Norfolk & Portsmouth Belt Line R. R. Co. were reduced by charges to Profit and Loss.

The stocks owned by the C. & O. Ry. Co. C. & O. Grain Elevator Co., Jamestown Export Co., Old Point Comfort Improvement Co., Va. State Fair Assn., Richmond Chamber of Commerce Seat, N. Y. Produce Exchange and bonds owned of C. & O. Grain Elevator Co., Richmond Standard Steel Spike & Iron Co. and Richmond Patch Iron & Ore Co. were transferred to record securities under \$1.00 valuation.

## CONTRACTS, AGREEMENTS, ETC.

Kanawha & Michigan Ry. Co.:

Trackage at Charleston, W. V., of 2,75 miles to connect with Kanawha Bridge & Terminal Co., C. & O. pays \$500 per month.

**Kanawha Bridge & Terminal Co.:**

Trackage over bridge at Charleston, W. Va. C. & O. pays \$1.00 per loaded car with guarantee of a movement of 600 cars per month.

**Lexington & Eastern Ry. Co.**

Pays C. & O. Ry. \$1,200.00 per annum for use of main track Netherlands to Lexington, Ky.

Rental reduced from \$4,000.00 per annum.

**Nelson Transfer Co.**

C. & O. Ry. pays 25c per through passenger, 12½c per half fare through passenger and 25c per piece of baggage for transfer from its stations to those of connecting lines at or near Charleston, W. Va.

## FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.

(Company's Material Excluded.)

| COMMODITY                          | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|------------------------------------|---|--|----------------------------------|
| Products of Agriculture:           |   |  |                                  |
| Grain -----                        | 6,777                                       | 226,012  | 232,789                          |
| Flour -----                        | 3,655                                       | 84,268   | 87,923                           |
| Other mill products -----          | 3,581                                       | 32,890   | 36,471                           |
| Hay -----                          | 2,488                                       | 34,226   | 36,714                           |
| Tobacco -----                      | 16,448                                      | 31,948   | 48,396                           |
| Cotton -----                       |   | 21,989   | 21,989                           |
| Fruits and vegetables -----        | 992   | 31,191   | 32,183                           |
| Total -----                        | 33,941                                      | 462,524  | 496,465                          |
| Products of Animals:               |   |  |                                  |
| Live stock -----                   | 12,360                                      | 5,129  | 17,489                           |
| Dressed meats -----                | 1,085                                       | 21,207   | 22,292                           |
| Other packing-house products ----- | 307   | 42,465   | 42,772                           |
| Poultry, game and fish -----       | 470   | 1,220  | 1,690                            |
| Wool -----                         | 502   | 7,128  | 7,630                            |
| Hides and Leather -----            | 1,099                                       | 15,338   | 16,437                           |
| Total -----                        | 15,823                                      | 92,487   | 108,310                          |
| Products of Mines:                 |   |  |                                  |
| Anthracite coal -----              |   | 3,143  | 3,143                            |
| Bituminous coal -----              | 331,100                                     | 5,309,705  | 5,640,805                        |
| Coke -----                         |   | 122,289  | 122,289                          |
| Ores -----                         | 27,616                                      | 69,535   | 97,151                           |



# FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY. (Company's Material Excluded.)

—Continued.

| COMMODITY  | Freight Originating<br>on this Road—<br>Whole Tons | Freight Received<br>from Connecting<br>Roads and Other<br>Carriers—Whole<br>Tons | Total Freight Ton-<br>nage—Whole Tons |
|--|--|--|---------------------------------------|
| Stone, sand, and other like<br>articles -----                  | 89,502   | 41,101   | 131,203                               |
| Total -----  | 448,218  | 5,546,373  | 5,994,591                             |
| Products of Forests:   |  |  |                                       |
| Lumber -----   | 291,749  | 288,596  | 580,345                               |
| Total -----  | 291,749  | 288,596  | 580,345                               |
| Manufactures:  |  |  |                                       |
| Petroleum and other oils----                                   | 4,726  | 26,483   | 31,209                                |
| Sugar -----  | 52   | 55,282   | 55,334                                |
| Naval stores -----   | 92   | 1,206  | 1,298                                 |
| Iron, pig and bloom-----                                       | 5,944  | 48,189   | 54,133                                |
| Iron and steel rails -----                                     | 3,901  | 13,005   | 16,906                                |
| Other castings and machinery                                   | 1,787  | 31,444   | 33,231                                |
| Bar and sheet metal -----                                      | 41,670   | 32,220   | 73,890                                |
| Cement, brick, and lime----                                    | 132,362  | 60,359   | 192,721                               |
| Agricultural implements----                                    | 364  | 18,188   | 18,552                                |
| Wagons, carriages, tools, etc                                  | 365  | 3,025  | 3,390                                 |
| Wines, liquors, and beers----                                  | 13,490   | 17,432   | 30,922                                |
| Household goods and furni-<br>ture -----                       | 637  | 2,434  | 3,071                                 |
| Total -----  | 205,390  | 309,267  | 514,657                               |
| Merchandise -----  | 54,822   | 236,447  | 291,269                               |
| Miscellaneous: Other commodi-<br>ties not mentioned above ---- | 62,236   | 318,202  | 380,438                               |
| Total tonnage—State-----                                       | 1,112,179  | 7,253,896  | 8,366,075                             |
| Total tonnage—Entire Line--                                    | 16,067,597   | 2,443,765  | 18,511,362                            |

## OHIO &amp; KENTUCKY RAILWAY COMPANY.

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HISTORY.

Organized August 7, 1894, under the laws of Kentucky.

## DIRECTORS.

Aaron Adams, East Orange, N. J.  
Jas. Wheeler Hartely, New York City, N. Y.  
Jas. E. Gay, New York City, N. Y.  
Leander N. Levell, Plainpiece, N. J.  
W. DeL. Walbridge, New York City, N. Y.

## OFFICERS.

W. D. L. Walbridge, President, No. 1 Broadway, N. Y.  
H. R. Mackay, Sec. and Treas., No. 1 Broadway, N. Y.  
Transportation Corporations controlled.—None.  
Outside operations.—None.  
Road acquired through lease or other agreement.—None.  
Road assigned to another carrier through lease or other agreement.—None.

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Capital Stock: Number of shares authorized 8,000 (common), 4,000 (preferred), 12,000 (total). Par value of one share \$25.00 (common), \$25.00 (preferred). Total par value authorized \$200,000 (common), \$100,000 (preferred), \$300,000 (total). Total par value outstanding \$9,000 (common), \$100,000 (preferred), \$109,000 (total). Total par value held by respondent corporation in treasury \$191,000 (common), \$191,000 (total). Total value held by respondent corporation \$9,000 (common), \$100,000 (preferred), \$109,000 (total). Dividends declared during year, none.

Remarks: 360 shares common stock issued for cash, realizing \$9,000. 4,000 shares preferred stock issued for cash, realizing \$50,000.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

The United States Postoffice Department uses a compartment in a passenger car one trip each way daily on passenger train, and one trip each way daily on mixed train; a Mail Clerk being in this service on all trains. The rate of pay per mile per annum is \$63.27.

No Sleeping, Parlor or Dining cars operated.

The Ohio & Kentucky Railway Company's passenger trains use the Lexington & Eastern Railway tracks between O. & K. Junction and Jackson, 1.4 miles, paying for same the entire passenger receipts earned between the points mentioned. The interchange of freight between the Ohio & Kentucky Railway Company and the Lexington & Eastern Railway Company is made at O. & K. Junction, and O. & K. has contracts with the Lexington & Eastern Railway Company covering the handling of interchange business, and divisions of revenue on business originating in either direction.

No other contracts with any other line than Lexington & Eastern Railway.

The Postal Telegraph Company has charge of the Commercial Telegraph business in connection with the Lexington & Eastern Railway. The Ohio & Kentucky Railway Company receives as its proportion forty (40) per cent of rates charged on through business between Ohio & Kentucky Railway telegraph stations and Lexington, Ky.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

| COMMODITY                       | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|---------------------------------|---|--|----------------------------------|
| <b>Products of Agriculture:</b> |   |  |                                  |
| Grain -----                     | 64  | 287  | 351                              |
| Flour -----                     | 27  | 945  | 972                              |
| Other Mill products -----       | 8   | 232  | 240                              |
| Hay -----                       | -----                                       | 203  | 203                              |
| Tobacco -----                   | -----                                       | 6  | 6                                |
| Fruits and Vegetables -----     | -----                                       | 118  | 118                              |
| <b>Total -----</b>              | <b>99</b>                                   | <b>1,791</b>   | <b>1,890</b>                     |
| <b>Products of Animals:</b>     |   |  |                                  |
| Live Stock -----                | 39  | 4  | 43                               |
| <b>Total -----</b>              | <b>39</b>                                   | <b>4</b>   | <b>43</b>                        |
| <b>Products of Mines:</b>       |   |  |                                  |
| Bituminous Coal -----           | 57,971                                      | -----  | 57,971                           |
| Other Products of Mines -----   | 5   | 241  | 246                              |
| <b>Total -----</b>              | <b>57,976</b>                               | <b>241</b>   | <b>58,217</b>                    |
| <b>Products of Forests:</b>     |   |  |                                  |
| Lumber -----                    | 15,452                                      | 46   | 15,498                           |
| Other Products of Forests ----- | 32,765                                      | 43   | 32,808                           |
| <b>Total -----</b>              | <b>48,217</b>                               | <b>89</b>  | <b>48,306</b>                    |
| <b>Manufactures:</b>            |   |  |                                  |
| Petroleum and other Oils -----  | -----                                       | 145  | 145                              |
| Iron and Steel Rails -----      | -----                                       | 178  | 178                              |

FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.  
 (Company's Material Excluded.)  
 —Continued.

| COMMODITY  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Other castings and Machinery ----                          | 33  | 88   | 121                              |
| Bar and Sheet Metal -----                                  | -----                                       | 165  | 165                              |
| Cement, Brick and Lime -----                               | 5   | 138  | 143                              |
| Agricultural Implements -----                              | -----                                       | 3  | 3                                |
| Wagons, Carriages, Tools, etc.----                         | 95  | 14   | 109                              |
| Household Goods and Furniture --                           | 48  | 96   | 144                              |
| Total -----  | 181   | 827  | 1,008                            |
| Merchandise -----  | 188   | 1,480  | 1,668                            |
| Miscellaneous: Other commodities not mentioned above ----- | 98  | 187  | 285                              |
| Total Tonnage—State -----                                  | 106,798                                     | 4,619  | 111,417                          |
| Total Tonnage—Entire Line--                                | 106,798                                     | 4,619  | 111,417                          |

## LOUISVILLE &amp; INTERURBAN RAILROAD CO.

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HISTORY.

Organized January 19, 1903, under the laws of Kentucky.  
Operated by "Louisville Railway Company."

## DIRECTORS.

T. J. Minary, Louisville, Ky.  
Alex P. Humphrey, Louisville, Ky.  
Harry Bishop, Louisville, Ky.  
Attila Cox, Louisville, Ky.  
Oscar Fenley, Louisville, Ky.  
J. B. Speed, Louisville, Ky.  
John Stites, Louisville, Ky.

## OFFICERS.

T. J. Minary, President, Louisville, Ky.  
Sam'l G. Boyle, Secretary and Treasurer, Louisville, Ky.

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Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock: (Common,) Number of shares authorized 15,000. Par value of one share \$100.00. Total par value authorized \$1,500,000.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—Passengers only.

## LOUISVILLE &amp; EASTERN RAILROAD COMPANY.

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HISTORY.

Organized January 14, 1901, under the laws of Kentucky.

Was organized in 1901, as the "Louisville, Anchorage & Pewee Valley Electric Railway Company," and name was changed in December, 1902 by the Stockholders, and approved January, 1903, by the proper State authorities, to the "Louisville & Eastern Railroad Company." On October 22, 1908, Henry Glover, of Louisville, Ky. was appointed Receiver of above named company by the Judge of the United States Circuit Court, Western District of Kentucky.

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DIRECTORS.

Davis Brown, Louisville, Ky.  
Percival Moore, Louisville, Ky.  
W. H. Netherland, Louisville, Ky.  
J. William Klaphte, Louisville, Ky.  
V. J. Blow, Louisville, Ky.  
J. J. Douglas, Louisville, Ky.  
Geo. B. Baker, Boston, Mass.

## OFFICERS.

Davis Brown, President. Louisville, Ky.  
H. H. Bullitt, Secretary, Louisville, Ky.  
W. H. Netherland, Treasurer, Louisville, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock: Number of shares authorized 20,000 (common,) 4,000 (preferred,) 24,000 (total). Par value of one share \$100.00. Total par value authorized \$2,000,000 (common), \$400,000 (preferred), \$2,400,000 (total). Total par value outstanding \$2,000,000 (Common), \$400,000 (preferred), \$2,400,000 (total). Dividends declared during year—None.

Remarks: 100 shares preferred issued for cash, realizing \$10,000. 20,000 shares common and 3,900 shares preferred issued for construction.

Railway stocks owned—Active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—Receiver appointed October 22, 1908.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—Passengers only.



## LOUISVILLE &amp; ATLANTIC RAILROAD COMPANY..

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HISTORY.

Organized August 1, 1899, under the laws of Kentucky. Purchased the Beattyville & Cumberland Gap Railroad Company, July 1, 1900, latter named company being a Kentucky corporation.

## DIRECTORS.

J. H. Haggin, New York, N. Y.  
A. E. Richards, Louisville, Ky.  
J. T. Richards, Louisville, Ky.  
G. H. Seelans, Philadelphia, Pa.  
Robt. Wallace, Midway, Ky.  
E. M. Wallace, Versailles, Ky.  
G. W. Gourley, Beattyville, Ky.  
J. L. Amsden, Versailles, Ky.  
Thos. W. Synnott, Wenonah, N. J.

## OFFICERS.

A. E. Richards, President, Louisville, Ky.  
Ed. M. Wallace, Secretary, Versailles, Ky.  
Bank of J. Amsden & Co., Versailles, Ky.  
Transportation corporations controlled—None.  
Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 10,000 (common), Par value of one share \$100.00. Total value authorized \$1,000,000. Total par value outstanding \$1,000,000. Total par value not held

by respondent corporation \$1,000,000. Dividends declared during the year—None.

Remarks: 10,000 shares common stock issued in year 1899 to purchasers of the R. N. L. & B. R. R.—in consideration of the transfer of that railroad, its receipts and franchise to the Louisville & Atlantic R. R. Co.

Railway stocks owned—Active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

#### MISCELLANEOUS.

Contract with the Kentucky Coal Development Company, covering the operation of the Sturgeon Creek Branch. Cost of operation and maintenance to be borne by the L. & A. R. R. Company. The Kentucky Coal Development Company to receive the revenue earned by the Sturgeon Creek Branch, and in addition, 8 cents per ton on coal, and 1 cent per 100 pounds on forest products, out of the Louisville & Atlantic Railroad Company's proportion of revenue on shipments delivered to the L. & A. Railroad Co., at Heidelberg, Kentucky.

# FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY. (Company's Material Excluded.)

| COMMODITY                                  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Products of agriculture :                  |   |  |                                  |
| Grain -----                                | 6,846                                       | 1,739  | 8,585                            |
| Flour -----                                | 1,484                                       | 432  | 1,916                            |
| Other mill products -----                  | 1,365                                       | 303  | 1,668                            |
| Hay -----                                  | 1,385                                       | 170  | 1,555                            |
| Tobacco -----                              | 863   | -----  | 863                              |
| Total -----                                | 11,943                                      | 2,644  | 14,587                           |
| Products of animals :                      |   |  |                                  |
| Live stock : -----                         | 1,409                                       | 67   | 1,476                            |
| Total -----                                | 1,409                                       | 67   | 1,476                            |
| Production of Mines :                      |   |  |                                  |
| Bituminous coal -----                      | 81,377                                      | 12,822   | 94,199                           |
| Stone, sand, and other like articles ----- | 6,749                                       | 1,065  | 7,814                            |
| Total -----                                | 88,126                                      | 13,887   | 102,013                          |
| Products of forests :                      |   |  |                                  |
| Lumber -----                               | 50,943                                      | 2,120  | 53,063                           |
| Other products of forests -----            | 62,887                                      | 1,295  | 64,182                           |
| Total -----                                | 113,830                                     | 3,415  | 117,245                          |
| Manufactures :                             |   |  |                                  |
| Petroleum and other oils -----             | 398   | 232  | 630                              |
| Sugar -----                                | -----                                       | 143  | 143                              |
| Iron and steel rails -----                 | 379   | -----  | 379                              |

FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.  
 (Company's Material Excluded.)  
 —Continued.

| COMMODITY  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Other castings and machinery ----                          | 788   | 1,021  | 1,809                            |
| Cement, brick and lime -----                               | 256   | 2,763  | 3,019                            |
| Agricultural implements -----                              | -----                                       | 52   | 52                               |
| Wagons, carriages, tools, etc. ----                        | -----                                       | 16   | 16                               |
| Wines, liquors and beers -----                             | 63  | 1  | 64                               |
| Household goods and furniture----                          | 130   | 92   | 222                              |
| Other manufactures -----                                   | 11  | 135  | 146                              |
| <b>Total -----</b>   | <b>2,025</b>                                | <b>4,455</b>   | <b>6,480</b>                     |
| Merchandise -----  | 2,672                                       | 5,964  | 8,636                            |
| Miscellaneous: Other commodities not mentioned above ----- | 2,526                                       | 1,697  | 4,223                            |
| <b>Total Tonnage—State -----</b>                           | <b>222,531</b>                              | <b>32,129</b>  | <b>254,660</b>                   |
| <b>Total Tonnage—Entire Line--</b>                         | <b>222,531</b>                              | <b>32,129</b>  | <b>254,660</b>                   |

## LOUISVILLE BRIDGE COMPANY.

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HISTORY.

Organized March 10th, 1856, under special Act of the General Assembly of Kentucky, approved March 10th, 1856, , entitled "An Act to incorporate the Louisville Bridge Company."

## DIRECTORS.

Charles H. Gibson, Louisville, Ky.  
Joseph Wood, Pittsburgh, Pa.  
J. J. Turner, Pittsburgh, Pa.  
J. J. Brooks, Pittsburgh, Pa.  
John L. Dodd, Louisville, Ky.

## OFFICERS.

Charles H. Gibson, President, Louisville, Ky.  
J. J. Morris, Secretary, Louisville, Ky.  
T. H. B. McKnight, Treasurer, Pittsburgh, Pa.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 15,000, (common).  
Par value of one share \$100.00. Total par value authorized \$1,500,000.  
Total par value outstanding \$1,500,000. Dividends declared during year, rate 8 per cent., amounting to \$120,000.00.

Remarks: 15,000 shares common issued for cash, and \$1,500,000.00 realized.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record kept.

## LOUISVILLE & SOUTHERN INDIANA TRACTION COMPANY.

### HISTORY.

Organized June 17, 1903, under laws of Indiana.

### DIRECTORS.

Samuel Iusull, 139 Adams St., Chicago.

C. D. Kelso, New Albany, Ind.

R. W. Waite, New Albany, Ind.

J. F. Strattan, New Albany, Ind.

M. J. Iusull, New Albany, Ind.

### OFFICERS.

Samuel Iusull, President, 139 Adams St., Chicago.

J. F. Strattan, Secretary, New Albany, Ind.

R. W. Waite, Treasurer, New Albany, Ind.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock; Number of shares authorized 200,000 common, 100,000 preferred, 300,000 total. Par value of one share \$10.00. Total par value authorized \$2,000,000.00 common, \$1,000,000.00 preferred, \$3,000,000.00 total. Total par value of outstanding \$2,000,000.00 common, \$435,080.00 preferred, \$2,435,080.00 total.

Total par value held by respondent corporation, in treasury \$564,920. Total par value not held by respondent corporation \$2,000,000.00 common, \$435,080.00 preferred, \$2,435,080.00 total. Dividends declared during year, amount \$1,611,002.00.

Remarks: 43,508 shares of preferred issued for cash, realizing \$435,080. 200,000 shares common issued for purchase of Southern Indiana Railway Company.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—Passengers only.

## PENNSYLVANIA TERMINAL RAILWAY COMPANY.

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HISTORY.

Organized under laws of Kentucky, June 2, 1903.

## DIRECTORS.

Charles H. Gibson, Louisville, Ky.  
Edw. B. Taylor, Pittsburg, Pa.  
Joseph Wood, Pittsburgh, Pa.  
J. J. Turner, Pittsburgh, Pa.  
D. T. McCabe, Pittsburgh, Pa.  
J. J. Brooks, Pittsburgh, Pa.  
B. W. Taylor, Louisville, Ky.

## OFFICERS.

Charles H. Gibson, President, Louisville, Ky.  
J. J. Morris, Secretary, Louisville, Ky.  
T. H. B. McKnight, Treasurer, Pittsburgh, Pa.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock: Number of shares authorized 2,500, common.

Par value of one share \$100.00. Total par value authorized \$250,000.00. Total par value outstanding \$100,000.00. Total par value not held by respondent corporation \$100,000.00.

Remarks: 1,000 shares common issued for construction of new properties, outstanding, on which \$100,000.00 cash was realized.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No records kept.

## ASHLAND COAL AND IRON RAILWAY COMPANY.

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HISTORY.

Organized May 25, 1865. Special Act, approved January 25th, 1865, as the Lexington & Big Sandy Railroad, Eastern Division and name changed to Ashland Coal & Iron Railway Co., by Act approved March 21, 1880. A consolidated company, Constituent Companies being "Ashland Coal Company," Western States Coal, Oil & Mining Co.," under general laws of Kentucky.

May 25, 1865, by authority given in the Charter of the Lexington & Big Sandy Railroad Company, Eastern Division, duly ratified by the share holders, authority for consolidation with Ashland Coal Company, and by unanimous consent of all share holders in interest, February 25th, 1869, authority for consolidation with Western States Coal, Oil & Mining Company.

Lexington & Big Sandy Railroad Co., re-organized by special Acts of the Legislature of Kentucky approved January 9th, 1852, March 2, 1860 and January 26th, 1865, as Ashland Coal and Iron Railway Company.

## DIRECTORS.

- K. L. Butler, Cincinnati, Ohio.
- | Frank Coles, Ashland, Ky.
- S. G. Gillfillan, Ironton, Ohio.
- E. C. Means, Low Moor, Va.
- Robert Peebles, Ashland, Ky.
- John Peebles, Portsmouth, Ohio.
- D. G. Putnam, Ashland, Ky.
- W. B. Seaton, Ashland, Ky.
- J. F. Winslow, Cincinnati, Ohio.

## OFFICERS.

- W. B. Seaton, President, Ashland, Ky.
- F. B. Moore, Secty. and Treas., Ashland, Ky.



Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock: Number of shares authorized 40,000, common. Par value of one share \$50.00. Total par value authorized \$2,000,000. Total par value outstanding \$773,500. Total par value not held by respondent corporation \$773,500. 4% dividend declared 1909.

Remarks: 15470 shares common stock issued for cash, realizing \$773,500.00.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record.

## SOUTHERN RAILWAY COMPANY IN KENTUCKY.

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HISTORY.

Organized August 17, 1894. The Louisville, Harrodsburg & Virginia Railroad Company, was chartered in Kentucky on March 7, 1868. (See laws of Kentucky 1867 and 1868, Vol. 2, page 555.) On April 25, 1884 the name of this corporation was changed to the Louisville Southern Railroad Company. The Georgetown branch was built under the charter of the Versailles & Midway Railroad Company and was purchased by the Louisville Southern Railroad Company. The property of the Louisville Southern Railroad Company was sold by foreclosure in the summer of 1894 and was conveyed by "Special Master's" deed to the Southern Railway Company in Kentucky, a corporation organized under the general laws of Kentucky August 17, 1894.

## DIRECTORS.

A. B. Andrews, Raleigh, N. C.  
W. W. Finley, Washington, D. C.  
Fairfax Harrison, Washington, D. C.  
R. D. Lankford, New York, N. Y.  
C. E. A. McCarthy, New York, N. Y.  
W. S. Townsend, New York, N. Y.

## OFFICERS.

W. W. Finley, President, Washington, D. C.  
R. D. Lankford, Secretary, New York, N. Y.  
H. C. Ansley, Treasurer, Washington, D. C.

Transportation corporations controlled—None.

Outside Operations: Kentucky & Indiana Bridge & R. R. Co. (Switching and Terminal Company.) Title: Operating agreement. State of Kentucky.

Road acquired through lease of other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 10,000 (common). Par value of one share \$100.00. Total par value authorized \$1,000,000. Total par value outstanding \$1,000,000. Total par value not held by respondent corporation \$1,000,000.

Remarks: 10,000 shares common stock issued for the purpose of re-organization. No record of cash realized.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

#### CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS WITHIN THE STATE OF KENTUCKY.

Agreement dated July 1, 1908, with Sullivan Transfer Co., covering transfer of freight at Louisville, Kentucky.

Agreement dated February 5, 1909 with S. C. Walker, covering construction and operation of industrial track at Louisville, Ky.

Agreement dated January 20, 1909 with H. A. McCowan, covering construction and operation of industrial track at Louisville, Ky.

Agreement dated February 4, 1909 with Kentucky & Ferro Concrete Construction Company, covering construction and operation of industrial track at Louisville, Ky.

Agreement dated April 15, 1909 with Buechel Ice, Coal & Storage Company covering construction and operation of industrial track at Buechel, Ky.

Agreement dated June 4, 1909, with Clear Fork Coal & Coke Company covering construction and operation of industrial track at Fonde, Ky.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

| COMMODITY                                 | Total Freight Tonnage—<br>Wh Tons |
|---|-----------------------------------|
| NOTE:—No record of points of origin.      |                                   |
| Products of agriculture:                  |                                   |
| Grain -----                               | 203,715                           |
| Flour -----                               | 66,227                            |
| Other mill products -----                 | 21,163                            |
| Hay -----                                 | 14,591                            |
| Tobacco -----                             | 18,957                            |
| Cotton -----                              | 18,421                            |
| Fruits and vegetables -----               | 11,831                            |
| Other products of agriculture -----       | 5,753                             |
| Total -----                               | 360,660                           |
| Products of animals:                      |                                   |
| Live stock -----                          | 17,049                            |
| Dressed meats -----                       | 2,926                             |
| Other packing-house products -----        | 15,695                            |
| Poultry, game and fish -----              | 756                               |
| Wool -----                                | 3,554                             |
| Hides and leather -----                   | 18,671                            |
| Total -----                               | 58,651                            |
| Products of mines:                        |                                   |
| Anthracite coal -----                     | 1,075                             |
| Bituminous coal -----                     | 177,727                           |
| Coke -----                                | 25,007                            |
| Ores -----                                | 1,075                             |
| Stone, sand and other like articles ----- | 76,170                            |
| Other products of mines -----             | 2,978                             |
| Total -----                               | 284,032                           |

## FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.

(Company's Material Excluded.)

—Continued.

| COMMODITY  | Total Freight Tonnage—<br>Whole Tons |
|--|--------------------------------------|
| NOTE:—No record of points of origin.                       |                                      |
| Products of forests:                                       |                                      |
| Lumber -----   | 138,533                              |
| Other products of forests -----                            | 35,557                               |
| Total -----  | 174,090                              |
| Manufactures:  |                                      |
| Petroleum and other oils -----                             | 46,514                               |
| Sugar -----  | 9,738                                |
| Naval stores -----   | 793                                  |
| Iron, pig and bloom -----                                  | 64,767                               |
| Iron and steel rails -----                                 | 1,052                                |
| Other castings and machinery -----                         | 3,832                                |
| Bar and sheet metal -----                                  | 780                                  |
| Cement, brick and lime -----                               | 76,868                               |
| Agricultural implements -----                              | 2,976                                |
| Wagons, carriages, tools, etc. -----                       | 4,063                                |
| Wines, liquors and beers -----                             | 17,024                               |
| Household goods and furniture -----                        | 1,529                                |
| Other manufactures -----                                   | 78,848                               |
| Total -----  | 308,784                              |
| Merchandise -----  | 144,778                              |
| Miscellaneous: Other commodities not mentioned above ----- | 139,109                              |
| Total Tonnage—State -----                                  | 1,470,104                            |
| Total Tonnage—Entire Line -----                            | 1,470,104                            |

## GLASGOW RAILWAY COMPANY.

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HISTORY.

Organized December 15, 1899 under the laws of Kentucky.  
Operated by Louisville & Nashville R. R. Co.

## DIRECTORS.

W. L. Porter, Glasgow, Ky.  
R. H. Porter, Glasgow, Ky.  
P. D. Trigg, Glasgow, Ky.  
W. F. Richardson, Glasgow, Ky.  
A. Laney, Glasgow, Ky.  
T. P. Dickinson, Glasgow, Ky.  
R. B. Trigg, Glasgow, Ky.

## OFFICERS.

H. C. Trigg, President, Glasgow, Ky.  
T. P. Dickinson, Glasgow, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired by respondent through lease or other agreement.  
—None.

Road assigned to another carrier through lease or other agreement—None.

Name of operating company: Louisville & Nashville Railroad Company. From Glasgow, Ky. to Glasgow Junction, Ky. Miles of Line: 10½. Lease or agreement: date January 8, 1907, five years.

Lessee operates this road, paying all the maintenance and operating expenditures turning over to lessor net operating revenues.

Capital stock: Number of shares authorized 1,000 (common), 1,000 (preferred), total 2,000. Total par value authorized \$100,000 (common), \$100,000 (preferred), total \$200,000. Total par value outstanding \$100,000 (common), \$100,000 (preferred), total \$200,000. Total par value not held by respondent corporation \$100,000 (common), \$100,000 (preferred), total \$200,000. Dividend declared during year, rate 10 per cent. (common), 6 per cent. (preferred).

Remarks: 1,000 shares common issued and given as a bonus with second mortgage bonds. 1,000 shares preferred issued to holders of the Glasgow R. R. Company, for their interest and property rights.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No records kept.

## CUMBERLAND RAILWAY COMPANY.

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HISTORY.

Organized April 29, 1902, under the laws of Tennessee. On March 23, 1905 this road acquired an extension of about two and one-half miles of road which had been constructed under the laws of Kentucky, under charter of the Middlesboro Mineral Railway Company, incorporated December 17, 1900.

## DIRECTORS.

D. A. Carpenter, Knoxville, Tenn.  
W. P. Chamberland, Knoxville, Tenn.  
Henry Fonde, Knoxville, Tenn.  
S. B. Luttrell, Knoxville, Tenn.  
G. W. Montgomery, Tazewell, Tenn.

## OFFICERS.

Henry Fonde, President, Knoxville, Tenn.  
R. D. Lankford, Secy., 30 Church St., New York, N. Y.  
H. C. Ansley, Treasurer, 1300 Pa. Ave., Washington, D. C.

Transportation corporations controlled—None.

Outside operations—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock: Number of shares authorized 1,000 (common. Par value of one share \$100.00. Total par value authorized \$100,000. Total par value outstanding \$100,000. Total par value not held by respondent corporation \$100,000.

Remarks: 1,000 shares common stock issued for cash, and \$100,000 realized.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.



**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

| COMMODITY<br><br>NOTE:—No record of points of Origin. | Total Freight Tonnage—<br>Whole Tons |
|---|--------------------------------------|
| Products of agriculture                               |                                      |
| Grain -----   | 1                                    |
| Flour -----   | 1                                    |
| Other mill products -----                             | 42                                   |
| Hay -----   | 20                                   |
| Total -----   | 64                                   |
| Products of mines:                                    |                                      |
| Bituminous coal -----                                 | 105,078                              |
| Stone, sand and other like articles -----             | 172                                  |
| Total -----   | 105,250                              |
| Products of forests:                                  |                                      |
| Lumber -----  | 3,300                                |
| Other products of forests -----                       | 54                                   |
| Total -----   | 3,354                                |
| Manufactures:   |                                      |
| Petroleum and other oils -----                        | 1                                    |
| Sugar -----   | 1                                    |
| Iron and steel rails -----                            | 165                                  |
| Other castings and machinery -----                    | 10                                   |
| Cement, brick and lime -----                          | 543                                  |
| Household goods and furniture -----                   | 81                                   |
| Other manufactures -----                              | 25                                   |
| Total -----   | 826                                  |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
 (Company's Material Excluded.)  
 —Continued.

| <b>COMMODITY</b><br><br>NOTE:—No record of points of origin.          | <b>Total Freight Tonnage—<br/>Whole Tons</b> |
|---|--|
| <b>Merchandise -----</b>  | <b>3,187</b>                                 |
| <b>Miscellaneous: Other commodities not mentioned<br/>above -----</b> | <b>630</b>                                   |
| <b>Total Tonnage—State -----</b>                                      | <b>113,311</b>                               |
| <b>Total Tonnage—Entire Line -----</b>                                | <b>113,362</b>                               |

## KENTUCKY &amp; TENNESSEE RAILWAY COMPANY.

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HISTORY.

Organized January 30, 1904, under the laws of Kentucky. Road was purchased by Kentucky and Tennessee Railway Company, same having been organized by another company May 22, 1902.

## DIRECTORS.

J. S. Stearns, Ludington, Mich.  
W. T. Cuevin, Ludington, Mich.  
R. L. Stearns, Secretary and Treasurer, Stearns, Ky.  
J. I. Burns, Ludington, Mich.  
E. E. Barthell, Nashville, Tenn.

## OFFICERS.

J. S. Stearns, President, Ludington, Mich.  
R. L. Stearns, Secretary and Treasurer. Stearns, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 250 (common). Par value of one share \$100.00. Total par value authorized \$25,000. Total par value outstanding \$25,000. Total par value not held by respondent corporation \$25,000.

Remarks: 250 shares common stock issued for cash, realizing \$25,000 cash.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—With U. S. Government \$331.32 annual revenue for carrying mail between Stearns and Yamacraw.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
(Company's material excluded.)

| COMMODITY                          | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight To Whole Tons |
|------------------------------------|---|--|-----------------------------|
| Products of agriculture:           |   |  |                             |
| Grain -----                        | 172   | 160  | 332                         |
| Flour -----                        | 83  | 23   | 106                         |
| Other mill products -----          | 166   | 26   | 192                         |
| Hay -----                          | 67  | 439  | 506                         |
| Fruit and vegetable -----          | 62  | 18   | 80                          |
| Total -----                        | 550   | 666  | 1,216                       |
| Products of animals:               |   |  |                             |
| Other packing-house products ----- | 31  | 10   | 41                          |
| Total -----                        | 31  | 10   | 41                          |
| Products of mines:                 |   |  |                             |
| Bituminous coal -----              | 203,135                                     | -----  | 203,135                     |
| Total -----                        | 203,135                                     | -----  | 203,135                     |
| Products of forests:               |   |  |                             |
| Lumber -----                       | 6,687                                       | -----  | 6,687                       |
| Other products of forests -----    | 24,143                                      | 17   | 24,160                      |
| Total -----                        | 30,830                                      | 17   | 30,847                      |
| Manufacturers:                     |   |  |                             |
| Petroleum and other oils -----     | 41  | 29   | 70                          |
| Sugar -----                        | 15  | 2  | 17                          |
| Iron and steel rails -----         | 56  | 29   | 105                         |
| Other castings and Machinery ----- | 92  | 65   | 157                         |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

—Continued.

| COMMODITY   | Freight Originating on this<br>Road—Whole Tons | Freight Received from Con-<br>necting Roads and Other<br>Carriers—Whole Tons | Total Freight Tonnage—<br>Whole Tons |
|---|--|--|--------------------------------------|
| Cement, brick and lime..  | 4  | 1  | 5                                    |
| Wines, liquors and beers ..                                       | -----  | 49   | 49                                   |
| Household goods and<br>Furniture -----                            | 28   | 53   | 81                                   |
| Other manufactures ----   | 115  | 206  | 321                                  |
| Total -----   | 351  | 454  | 805                                  |
| Merchandise -----   | 450  | 125  | 575                                  |
| Miscellaneous: Other com-<br>modities not mentoned<br>above ----- | 12   | 2  | 14                                   |
| Total Tonnage—State   | 235,359  | 1,274  | 236,633                              |

## OHIO VALLEY ELECTRIC RAILWAY COMPANY.

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HISTORY.

Organized September 27, 1899. Chartered August 2, 1899, under the laws of West Virginia.

## DIRECTORS.

Rudolph Ellis, Philadelphia, Pa.  
Wm. S. Ellis, Philadelphia, Pa.  
Isaac H. Clothier, Philadelphia, Pa.  
Morris L. Clothier, Philadelphia, Pa.  
Chas. Langstreth, Philadelphia, Pa.  
Wm. C. Spraul, Chester, Pa.  
Robert Wetherill, Chester, Pa.  
Wm. E. Chilton, Charleston, W. Va.  
Wm. A. MacCorkle, Charleston, W. Va.  
Jos. E. Chilton, Charleston, W. Va.  
J. L. Caldwell, Huntington, W. Va.

## OFFICERS.

Wm. C. Spraul, President, Chester, Pa.  
Thos. McK. Hays, Sec'y and Treas., Huntington, W. Va.

## TRANSPORTATION CORPORATIONS CONTROLLED.

## Sole owners of:

Ashland & Catlettsburg Street Railway Company, by stock ownership; Consolidated Light & Railway Company, by stock ownership; Ashland Interurban Railway Company, by stock ownership; Huntington & Charleston Railroad Company, by stock ownership; Kanawha Valley Traction Company, by stock ownership; owns 51% of capital stock of Ashland & Ironton Transfer & Ferry Co.

Outside operations—Consolidated Light & Railway Co. Character of business: Electric Light, Title: Ownership of stock. State of West Virginia.

Ashland Electric Light & Power Co. Character of business: Electric light. Title: Ownership of stock. State of Kentucky.

The Ironton Electric Co. Character of business: Electric light. Title: Ownership of stock. State of Ohio.

Ashland & Ironton Transfer & Ferry Co. Character of business: Ohio River Ferry. Title: 51 per cent. of stock. State of Kentucky.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 20,000 (common), 4,000 preferred), total 24,000. Par value of one share \$100.00. Total par value authorized \$2,000,000 (common), \$400,000 (preferred), total \$2,400,000. Total par value outstanding \$2,000,000 (common), \$344,300 (preferred), total \$2,344,300. Total par value held by respondent corporation, in treasury \$55,700 (preferred). Dividends declared during the year, rate 6 per cent. (preferred).

Remarks: 1,443 shares preferred stock issued for cash, realizing \$129,870; 20,000 shares common stock issued for construction of new properties; 2,000 shares preferred stock issued for acquisition of securities.

Railway stocks owned—active corporations—None.

Stocks of respondent corporation—None.

Stocks of Corporations whose property forms a part of the system of respondent corporation and par value of stocks owned not held in sinking or other funds:

Ashland Interurban Railway Co., unpledged \$6,000; Huntington & Charleston R. R. Co., unpledged \$5,500; Ashland & Catlettsburg Street Railway Co., unpledged \$50,000; Consolidated Light & Railway Co., unpledged \$50,000.

Stocks of corporations whose property does not form a part of the system of respondent corporations and par value of stock owned not held in sinking fund or other funds:

Kanawha Valley Traction Co., unpledged \$500,000.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky: Ashland Interurban Railway Co., on May 9, 1909 began operation on part of the 1.2 miles of its line in Ashland, Ky.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—Does a passenger business, also carries freight.



## MOREHEAD &amp; NORTH FORK RAILROAD COMPANY.

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HISTORY.

Organized 1905 under the laws of New Jersey.

## DIRECTORS.

W. M. McCormick, 218 Franklin Bank Bldg., Philadelphia, Pa.  
A. W. Lee, Clearfield, Pa.  
John W. Wrigley, Clearfield, Pa.  
W. B. Townsend, Townsend, Tenn.

## OFFICERS.

W. M. McCormick, President, 218 Franklin Bank Bldg., Philadelphia, Pa.

John W. Wrigley, Secy. and Treas., Clearfield, Pa.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 5,000 (common), Par value of one share \$100.00. Total par value authorized \$500,000.

Remarks: 1,500 shares common stock issued in 1909 for construction of new properties.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—Fifteen miles of road constructed from Paragon, Ky. to Redwine, Ky. Fifteen Hundred shares of common stock issued; one hundred and fifty bonds of \$1,000.00 each issued.

Contracts, agreements, etc., affecting business within the State of Kentucky—with U. S. Government, for carrying the mail from Morehead to Loveland (Redwine, Ky.)

Freight traffic movement—State of Kentucky—No record kept.

## CADIZ RAILROAD COMPANY.

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HISTORY.

Organized under the laws of Kentucky, March 9, 1901.

## DIRECTORS.

W. C. White Cadiz, Ky.  
D. L. Grinter, Cadiz, Ky.  
J. W. Crenshaw, Cadiz, Ky.  
Geo. L. Smith, Cadiz, Ky.  
J. B. Alexander, Cadiz, Ky.  
F. G. Terry, Cadiz, Ky.  
A. C. Burnett, Cadiz, Ky.

## OFFICERS.

W. C. White, President, Cadiz, Ky.  
A. C. Burnett, Secretary, Cadiz, Ky.  
J. P. White Treasurer, Cadiz, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 2,400 (common).  
Par value of one share \$25.00. Total par value authorized \$60,000.  
Total par value outstanding \$24,825.

Remarks: 993 shares of common stock outstanding were issued for cash, realizing \$24,825.00.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS  
WITHIN THE STATE OF KENTUCKY.

With American Express Co.

With U. S. Government Railway Mail Service.

# FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY. (Company's Material Excluded.)

| COMMODITY                                 | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|---|---|--|----------------------------------|
| Products of agriculture                   |   |  |                                  |
| Grain -----                               | 108   | -----  | 108                              |
| Flour -----                               | 40  | -----  | 40                               |
| Tobacco -----                             | 1,267                                       | -----  | 1,267                            |
| Total -----                               | 1,415                                       | -----  | 1,415                            |
| Products of animals:                      |   |  |                                  |
| Live stock -----                          | 200   | -----  | 200                              |
| Poultry, game and fish--                  | 10  | -----  | 10                               |
| Total -----                               | 210   | -----  | 210                              |
| Products of mines                         |   |  |                                  |
| Bituminous coal -----                     | -----                                       | 2,391  | 2,391                            |
| Stone, sand and other like articles ----- | -----                                       | 1,281  | 1,281                            |
| Total -----                               | -----                                       | 3,672  | 3,672                            |
| Products of forests                       |   |  |                                  |
| Lumber and cross ties--                   | 5,772                                       | 254  | 6,026                            |
| Total -----                               | 5,772                                       | 254  | 6,026                            |
| Manufacture                               |   |  |                                  |
| Petroleum and other oils -----            | -----                                       | 122  | 122                              |
| Iron, pig and bloom ----                  | 12  | -----  | 12                               |
| Cement, brick and lime--                  | -----                                       | 155  | 155                              |
| Agricultural Implements--                 | -----                                       | 14   | 14                               |
| Other manufactures ----                   | -----                                       | 391  | 391                              |
| Total -----                               | 12  | 682  | 694                              |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
 (Company's Material Excluded.)  
 —Continued.

| COMMODITY            | Freight Originating on this<br>Road—Whole Tons | Freight Received from Con-<br>necting Roads and Other<br>Carriers—Whole Tons | Total Freight Tonnage—<br>Whole Tons |
|----------------------|--|--|--------------------------------------|
| Merchandise -----    | 172  | 1,117  | 1,289                                |
| Total Tonnage—State  | 7,581  | 5,725  | 13,306                               |
| Total Tonnage—Entire | 7,581  | 5,725  | 13,306                               |
| Line -----           |  |  |                                      |

## BROOKSVILLE RAILROAD COMPANY.

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HISTORY.

Organized August 8, 1895 under the laws of Kentucky.

## DIRECTORS.

J. W. R. Conlia, Brooksville, Ky.  
W. B. Wallin, Brooksville, Ky.  
Martin Finn, Brooksville, Ky.  
H. W. Brown, Brooksville, Ky.  
W. P. Haley, Brooksville, Ky.  
G. Henry Frank, Brooksville, Ky.  
J. S. Irme, Brooksville, Ky.  
J. H. Clarke, Brooksville, Ky.  
Y. Alexander, Lexington, Ky.  
J. H. Beckett, Brooksville, Ky.

## OFFICERS.

Y. Alexander, President, Brooksville, Ky.  
G. Henry Frank, Secy. and Treas., Brooksville, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of share authorized 640 (common). Par value of one share \$50.00. Total par value authorized \$32,000.00. Total par value outstanding \$32,000.00. Total par value not held by respondent corporation \$22,500. Dividends declared during year \$2,700.

Remarks: 450 shares common stock issued for cash, realizing \$22,500.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record kept.

## KENTUCKY HIGHLANDS RAILROAD COMPANY.

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HISTORY.

Organized April 2, 1907, under the laws of Kentucky.

## DIRECTORS.

G. F. Berry, Frankfort, Ky.  
E. B. Rodman, Frankfort, Ky.  
P. F. Manning, Frankfort, Ky.  
W. J. Gorman, Frankfort, Ky.  
D. A. Parker, Frankfort, Ky.

## OFFICERS.

P. F. Manning, President, Frankfort, Ky.  
G. F. Berry, Vice-President, Frankfort, Ky.  
D. A. Parker, Secretary, Frankfort, Ky.  
E. B. Rodman, Treasurer, Frankfort, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 2,500 (common).  
Par value of one share \$100.00. Total par value authorized \$250,000. Total par value outstanding \$250,000. Total par value not held by respondent corporation \$250,000.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS  
WITHIN THE STATE OF KENTUCKY.

By virtue of an agreement entered into on November 25, 1907 by and between Louisville & Nashville Railroad Co., and the Kentucky Highlands R. R. Co., the first party grants permission for the engines and passenger cars of the second party to use the tracks of the first party between Frankfort and Clyffeside Junction, (a distance of about one mile) for which the second party agrees to pay 25 cents per trip.

This agreement further provides that the second party shall have the use of the first party's passenger station at Frankfort, for which the second party is to pay \$25.00 per month rental.

# FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY. (Company's Material Excluded.)

| COMMODITY                            | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--------------------------------------|---|--|----------------------------------|
| Products of agriculture:             |   |  |                                  |
| Grain -----                          | -----                                       | 6902   | 6902                             |
| Total -----                          | -----                                       | 6902   | 6902                             |
| Products of mines:                   |   |  |                                  |
| Bituminous coal -----                | -----                                       | 13933  | 13933                            |
| Coke -----                           | -----                                       | 180  | 180                              |
| Stone, sand, and like articles ----- | -----                                       | 450  | 450                              |
| Total -----                          | -----                                       | 14563  | 14563                            |
| Products of forests:                 |   |  |                                  |
| Lumber -----                         | -----                                       | 60   | 60                               |
| Total -----                          | -----                                       | 60   | 60                               |
| Manufactures:                        |   |  |                                  |
| Other castings and machinery -----   | -----                                       | 50   | 50                               |
| Cement, brick, and lime -----        | -----                                       | 930  | 930                              |
| Wines, liquors, and beers -----      | 4716  | -----  | 4716                             |
| Total -----                          | 4716  | 980  | 5696                             |
| Merchandise -----                    | 5   | 5279   | 5696                             |
| Total tonnage—State -----            | 4721  | 27784  | 32505                            |
| Total tonnage—entire line -----      | 4721  | 27784  | 32505                            |

## EASTERN KENTUCKY RAILWAY COMPANY

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HISTORY.

Organized under the laws of Kentucky.

## DIRECTORS.

Nathaniel Thayer, Boston, Mass.

E. V. R. Thayer, Boston, Mass.

C. Minot Weed, Boston, Mass.

Walter Hunnewell, Boston, Mass.

Edward B. Townsend, Boston, Mass.

Walter C. Harris, Salem, Mass.

Sturgis G. Bates, Riverton, Ky.

## OFFICERS.

Nathaniel Thayer, President, Boston, Mass.

Edward B. Townsend, Secy. and 'Treas., Boston, Mass.

Sturgis G. Bates, V. Pres't. & Gen'l M'gr., Riverton, Ky.

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Transportation corporations controlled—None.

Outside operations: Boghead mines. Character of business, mining. Title, owned. State of Kentucky. "Stinson Store." Character of business, Merchandise. Title, owned. State of Kentucky.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 100,000 (Common), 30,000 (preferred), total 130,000. Par value of one share



\$100.00. Total par value authorized \$10,000,000.00 (common), \$3,000,000.00 (preferred), total \$13,000,000.00. Total par value outstanding \$1,697,800.00 (common), \$3,199.00 (script), \$1,799,500.00 (preferred), total \$3,480,599.00.

Remarks: 15,000 shares common stock issued for cash, realizing \$1,500,000. None issued during the year 1909.

Railway stocks owned—active corporations—None.

Railway stocks owned inactive corporation—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky.

Adams Express Co., pays this Company 40 per cent of gross earnings made by business over its line.

Contract with Post Office Department for carrying of mail on this company's line.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
(Company's Material Excluded.)

| COMMODITY                                  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads, and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|---|----------------------------------|
| <b>Products of Agriculture:</b>            |   |   |                                  |
| Grain -----                                | 70  | 36  | 106                              |
| Flour -----                                | 379   | 330   | 709                              |
| Other Mill Products ----                   | 363   | 206   | 569                              |
| Hay -----                                  | 48  | 75  | 123                              |
| Tobacco -----                              | 838   | -----   | 838                              |
| Fruit and Vegetables ---                   | 10  | 140   | 150                              |
| Other products of agriculture -----        | 43  | 86  | 129                              |
| <b>Total -----</b>                         | <b>1751</b>                                 | <b>873</b>  | <b>2624</b>                      |
| <b>Products of Animals:</b>                |   |   |                                  |
| Live stock -----                           | 1195  | 12  | 1207                             |
| Dressed meats -----                        | 58  | 50  | 108                              |
| Poultry, game, and fish, and eggs -----    | 235   | -----   | 235                              |
| Wool -----                                 | 5   | -----   | 5                                |
| Hides and leather -----                    | 6   | -----   | 6                                |
| <b>Total -----</b>                         | <b>1502</b>                                 | <b>62</b>   | <b>1564</b>                      |
| <b>Products of Mines:</b>                  |   |   |                                  |
| Anthracite Coal -----                      | -----                                       | -----   | -----                            |
| Bituminous coal -----                      | 13071                                       | 64  | 13135                            |
| Stone, sand, and other like articles ----- | 1582  | 224   | 1806                             |
| Other products of mines -----              | 117   | -----   | 117                              |
| <b>Total -----</b>                         | <b>14770</b>                                | <b>288</b>  | <b>15058</b>                     |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
 (Company's Material Excluded.)  
 —Continued.

| COMMODITY  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Products of Forests:                                       |   |  |                                  |
| Lumber -----   | 339   | 75   | 414                              |
| Other products of forests                                  | 8881  | 2  | 8883                             |
| Total -----  | 9220  | 77   | 9297                             |
| Manufactures:  |   |  |                                  |
| Petroleum and other oils                                   | 87  | 84   | 171                              |
| Other Castings and machinery -----                         | 21  | 53   | 74                               |
| Bar and sheet metal -----                                  | 1   | 10   | 11                               |
| Cement, brick, and lime --                                 | 25  | 435  | 460                              |
| Agricultural implements                                    | 7   | 34   | 41                               |
| Wagons, carriages, tools, etc. -----                       | 1   | 30   | 31                               |
| Wines, liquors, and beers -----                            |   | 3  | 3                                |
| Household goods and furniture -----                        | 71  | 133  | 204                              |
| Other manufactures -----                                   | 198   | 2781   | 2979                             |
| Total -----  | 411   | 3563   | 3974                             |
| Merchandise -----  | 145   | 913  | 1058                             |
| Miscellaneous: Other commodities not mentioned above ----- | 112   | 377  | 489                              |
| Total Tonnage—State  | 27911                                       | 6153   | 34064                            |

## NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY.

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### HISTORY.

Organized January 24th, 1848, under title of "Nashville & Chattanooga Railroad Company."

Organized as follows:

Tennessee, Act December 11, 1845,

Georgia, Act December 29, 1847,

Alabama, Act January 21, 1850,

Kentucky, Act March 8, 1856.

The Nashville & Chattanooga Railroad Company acquired,—by purchase from the State of Tennessee in November 1871, the railroad and properties of the Nashville & Northwestern Railroad Company, which was organized under an act of Tennessee, Chapter 74, page 82 of the Act of 1851-2. To aid in construction of the Nashville & Northwestern Railroad the State of Tennessee endorsed its bonds, and the Company failing to pay the interest, the State purchased its lien, and the road was purchased as above stated.

In 1873, the name of the "Nashville and Chattanooga Railroad Company" was changed to "Nashville, Chattanooga and St. Louis Ry. Co.," the several branches were acquired at various dates, by purchase, and construction.

### DIRECTORS.

E. C. Lewis, Nashville, Tenn.

J. W. Thomas, Jr., Nashville, Tenn.

A. H. Robinson, Nashville, Tenn.

W. R. Cole, Nashville, Tenn.

E. W. Thompson, Nashville, Tenn.

J. H. Fall, Nashville, Tenn.

H. W. Buttorff, Nashville, Tenn.

W. W. Berry, Nashville, Tenn.  
J. B. Richardson, Nashville, Tenn.  
R. M. Dudley, Nashville, Tenn.  
M. H. Smith, Louisville, Ky.  
J. E. Washington, Cedar Hill, Tenn.  
N. C. Collier, Murfreesboro, Tenn.  
Newell Sanders, Chattanooga, Tenn.  
H. Walters, New York, New York.

#### OFFICERS.

J. W. Thomas, Jr., President, Nashville, Tenn.  
J. H. Ambrose, Secty. and Treas., Nashville, Tenn.

Transportation corporations controlled—None.

Outside operations—Chattanooga, Tenn., restaurant, owned. Dining cars rented.

Road acquired by respondent for operation through lease or other agreement.

Name of owning company: Western & Atlantic R. R. Miles of line, 136.82. Date, December 27, 1890. Term, 29 years. Leased at a rental of \$35,001.00 per month.

Name of owning company: Paducah & Memphis Division. Miles of line, 230.05 and Lexington (Tenn.) to Perryville, 24.15 miles. Date, September 9, 1896. Term, 99 years. Leased from Louisville & Nashville Railroad Company, at rental of \$154,650.00 per annum, from December 14, 1895, and 5 per cent per annum on money to be furnished by Louisville & Nashville Railroad Company for improvement.

Road assigned to another carrier for operation through lease or other agreement—None.

Capital stock: Number of shares authorized 100,000. Par value of one share \$100.00. Total par value authorized \$10,000,000. Total par value outstanding \$10,000,000. Total par value held by respondent corporation—In treasury \$1,535,937. Total par value not held by respondent corporation \$98,464,062. Dividends declared during year, Rate 5 per cent.

Remarks: 54,934 shares of outstanding common stock, were issued for cash, realizing \$3,827,706. 45,066 shares outstanding com-

mon stock were issued for purchase of railway, or other property.

Stocks of respondent corporation, Nashville, Chattanooga & St. Louis Railway: Par value of stocks owned not held in sinking or other funds, Unpledged, 153,593½. Valuation of stocks owned \$768,763.763.

Railway stocks owned: Inactive corporations—None.

Important changes during the year—State of Kentucky.

\$20,000 bonds of Tracy City Branch redeemed. \$312,000 Western Atlantic Railroad Income Bonds charged off. \$1,500 Georgia Manufacturing and Public Service Co., bonds charged off.

\$1,600 Georgia Mfg. & Public Service Co., stock charged off. \$100,00 Wholesale Merchants Warehouse Company bonds purchased.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

## FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.

(Company's Material Excluded.)

| COMMODITY                           | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|-------------------------------------|---|--|----------------------------------|
| Products of Agriculture:            |   |  |                                  |
| Grain -----                         | 11980                                       | 4087   | 16067                            |
| Flour -----                         | 558   | 759  | 1317                             |
| Other mill products -----           | 1878  | 138  | 2016                             |
| Hay -----                           | 352   | 58   | 410                              |
| Tobacco -----                       | 7812  | 139  | 7951                             |
| Cotton -----                        | 815   | 835  | 1650                             |
| Fruit and vegetables -----          | 354   | 922  | 1276                             |
| Other products of agriculture ----- | 6809  | 1232   | 8041                             |
| Total -----                         | 30558                                       | 8170   | 38728                            |
| Products of Animals:                |   |  |                                  |
| Live stock -----                    | 2027  | 134  | 2161                             |
| Other packing-house products -----  | 131   | 128  | 259                              |
| Poultry, game, and fish -----       | 112   | -----  | 112                              |
| Wool -----                          | 5   | 4  | 9                                |
| Hides and leather -----             | 300   | 4  | 304                              |
| Other products of -----             |   |  |                                  |
| Total -----                         | 2575  | 270  | 2845                             |
| Products of Mines:                  |   |  |                                  |
| Bituminous Coal -----               | 3279  | 13634  | 16913                            |
| Coke -----                          | 235   | 631  | 866                              |
| Ores -----                          | 1567  | -----  | 1567                             |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
 (Company's Material Excluded.)  
 —Continued.

| COMMODITY                                  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Products of Mines—Cont'd.:                 |   |  |                                  |
| Stone, sand, and other like articles ----- | 6982  | 798  | 7780                             |
| Other products of mines -----              | 10222                                       | 20   | 10242                            |
| Total -----                                | 22285                                       | 15083  | 37368                            |
| Products of Forests:                       |   |  |                                  |
| Lumber -----                               | 78993                                       | 5085   | 84078                            |
| Other Products of forests -----            | 20104                                       | 658  | 20762                            |
| Total -----                                | 99097                                       | 5743   | 104840                           |
| Manufactures:                              |   |  |                                  |
| Petroleum and other oils -                 | 1139  | 367  | 1506                             |
| Sugar -----                                | 98  | 178  | 276                              |
| Naval Stores -----                         | 17  | 3  | 20                               |
| Iron, pig and bloom ----                   | 11305                                       | 33   | 11338                            |
| Iron and Steel Rails ----                  | 8   | 25   | 33                               |
| Other Castings and machinery -----         | 793   | 226  | 1019                             |
| Bar and sheet metal ----                   | 1443  | 200  | 1643                             |
| Cement, brick, and lime -                  | 7827  | 2658   | 10485                            |
| Agricultural Implements                    | 60  | 245  | 305                              |
| Wagons, carriages, tools,                  | 1213  | 228  | 1441                             |
| Wines, Liquors, and beers                  | 502   | 479  | 981                              |
| Household goods and furniture -----        | 500   | 91   | 591                              |
| Total -----                                | 24905                                       | 4733   | 29638                            |



## FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.

(Company's Material Excluded.)

—Continued.

| COMMODITY  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons. |
|--|---|--|-----------------------------------|
| Merchandise -----  | 11594                                       | 12578  | 24172                             |
| Miscellaneous: Other commodities not mentioned above ----- | 5595  | 4988   | 10583                             |
| Total tonnage—State  | 196609                                      | 51565  | 248174                            |
| Total tonnage—Entire line                                  | 3625622                                     | 1652756  | 5278378                           |

## LICKING RIVER RAILROAD COMPANY

## HISTORY.

Organized November 15, 1899, under laws of Kentucky. Original corporation, "Licking Valley Railway Company."

## DIRECTORS.

Robert H. Lanyon, 1449 Railway Exchange, Chicago, Ill.  
 Minnie S. Lanyon, 1449 Railway Exchange, Chicago, Ill.  
 Melvin M. Snow, 1449 Railway Exchange, Chicago, Ill.  
 Carl M. Mohr, 1449 Railway Exchange, Chicago, Ill.  
 Harold R. Stone, 1449 Railway Exchange, Chicago, Ill.

## OFFICERS.

Harold R. Stone, President, 1449 Railway Exchange, Chicago, Ill.

Melvin M. Snow, Secretary, 1449 Railway Exchange, Chicago, Ill.

Carl M. Mohr, Treasurer, 1449 Railway Exchange, Chicago, Ill.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock: Number of shares authorized 500, common. Par value of one share \$100. Total par value authorized \$50,000. Total par value outstanding \$30,000. Total par value not held by respondent corporation \$30,000.

Remarks: 300 shares outstanding common stock issued for cash, and purchased by Chas. V. Lord, at foreclosure sale, and by him conveyed to the company for its stocks and bonds.

Railway stocks owned—active corporations—None.

Railway stocks owned—Inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight Traffic Movement—State of Kentucky. (Company's Material excluded)—Products of forests, Lumber. Freight originating on this road, whole tons 27,431; Total freight tonage, whole tons 27,431; Per cent 98.31. Total, whole tons 27,431, per cent 98.31.

## LOUISVILLE, HENDERSON &amp; ST. LOUIS RY. CO.

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HISTORY.

Organized May 29, 1896 under laws of Kentucky. Louisville, St. Louis & Texas Ry. Co., was organized January 13, 1882, under laws of Kentucky, and amended charter under Acts of 1888.

## DIRECTORS.

Attila Cox, Louisville, Ky.  
Harry Weissinger, Louisville, Ky.  
Oscar Fenley, Louisville, Ky.  
John L. Helm, Louisville, Ky.  
M. H. Smith, Louisville, Ky.  
W. L. Mapother, Louisville, Ky.  
J. H. Ellis, Louisville, Ky.  
Wm. Marshall Bullitt, Louisville, Ky.  
Otto Mark, Birmingham, Ala.

## OFFICERS.

Lucien J. Irwin, President, Louisville, Ky.  
W. L. Mapother, Vice President, Louisville, Ky.  
Ridgley Cayce, Secretary, Louisville, Ky.  
L. W. Botts, Treasurer, Louisville, Ky.

Transportation corporations controlled—None.

Outside operations—Parlor and chair car service owned—Kentucky.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares common authorized 20,000. Par value of one share \$100.00. Total par value authorized \$2,000,000. Total par value outstanding \$2,000,009. Total par value not held by respondent corporation \$2,000,000. Number of shares preferred authorized 20,000. Par value of one share \$100.00. Total par value authorized \$2,000,000. Dividends declared during year—None.

Total par value outstanding \$2,000,000. Total par value not held by respondent corporation \$2,000,000.

Total: Number of shares authorized 40,000. Par value of one share \$100.00. Total par value authorized \$4,000,000. Total par value outstanding \$4,000,000. Total par value not held by respondent corporation \$4,000,000.

Remarks: Common and preferred stock outstanding was issued for reorganization purposes.

Railway stocks owned—Active corporations—None.

Railway stocks owned—Inactive corporations—None.

Important changes during the year—State of Kentucky—None.

### CONTRACTS, AGREEMENTS, ETC.

#### ADAMS EXPRESS CO.

For transportation of Express matter in passenger trains at minimum of \$18,000.00 per annum.

#### U. S. GOVERNMENT.

For transportation of U. S. Mails under contracts aggregating \$23,415.59 per annum.

#### L. & N. R. R. Co.

For rent of tracks between Louisville and Strawberry, Ky., on payment of  $\frac{1}{2}$  of 5 per cent interest on agreed valuation, plus proportion of expense of maintenance, renewals, improvements and taxes.

Rent of freight yard at Louisville, Ky., on payment of 5 per cent interest on agreed valuation, plus expense of maintenance and taxes.

Use of Union Passenger Station at Louisville, Ky., on basis of proportion of interest on agreed valuation, operating expenses, maintenance and taxes.

Use of Union Passenger Station at Henderson, Ky., on basis of proportion of interest on agreed valuation, operating expenses and taxes.

Use of Freight Depot facilities at Owensboro, Ky., on basis of

proportion of interest on agreed valuation, operating expenses, maintenance and taxes.

Use of Freight Depot facilities at Henderson, Ky., at agreed rates per ton.

Rent of L. & N. R. R. tracks between Henderson, Ky., and Howell, Ind., for freight trains, at \$8,000.00 per year.

Rent of L. & N. R. R. tracks between Henderson, Ky., and Evansville, Ind., for passenger trains based on total passenger and mail revenue between the points named.

Rented to L. & N. R. R. and I. C. R. R.: Use of Union Passenger Station at Owensboro, Ky., on basis of proportion of interest on agreed valuation, operating expenses, maintenance and taxes.

#### LOUISVILLE, BRIDGE COMPANY.

For use of tracks at Louisville, Ky., payments based on number of cars handled.

#### I. C. R. R.

Joint Interlocker at Henderson, Ky., on basis of proportion of operating expenses and maintenance.

#### WESTERN UNION TELEGRAPH CO.

For operation and maintenance of telegraph line on Company's property, on basis of exchange of service.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

| COMMODITY                                 | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|---|---|--|----------------------------------|
| <b>Products of Agriculture:</b>           |   |  |                                  |
| Grain -----                               | 13712                                       | 108005   | 121717                           |
| Flour -----                               | 739   | 5809   | 6548                             |
| Other mill products -----                 | 36698                                       | -----  | 36698                            |
| Hay -----                                 | 1450  | 191  | 1641                             |
| Tobacco -----                             | 18409                                       | 2985   | 21394                            |
| Cotton -----                              | -----                                       | 2538   | 2538                             |
| Fruit and vegetables -----                | 1678  | 3510   | 5188                             |
| Total -----                               | 72686                                       | 123038   | 195724                           |
| <b>Products of Animals:</b>               |   |  |                                  |
| Live stock -----                          | 7433  | 9616   | 17049                            |
| Dressed meats -----                       | 34  | 1402   | 1436                             |
| Other packing-house products -----        | 43  | 4821   | 4864                             |
| Poultry, game and fish --                 | 271   | -----  | 271                              |
| Wool -----                                | 43  | 2279   | 2322                             |
| Hides and leather -----                   | 276   | 1471   | 1747                             |
| Total -----                               | 8100  | 19589  | 27689                            |
| <b>Products of Mines:</b>                 |   |  |                                  |
| Bituminous Coal -----                     | 23301                                       | 1335   | 24636                            |
| Coke -----                                | 994   | 5728   | 6722                             |
| Ores -----                                | 18  | 1223   | 1241                             |
| Stone, sand and other like articles ----- | 27078                                       | 1669   | 28747                            |
| Total -----                               | 51391                                       | 9955   | 61346                            |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**  
**—Continued.**

| COMMODITY   | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|---|---|--|----------------------------------|
| <b>Products of Forests:</b>                                 |   |  |                                  |
| Lumber -----  | 18657                                       | 8943   | 27600                            |
| Other products of forests                                   | 4349  | 24   | 4373                             |
| <b>Total -----</b>  | <b>23006</b>                                | <b>8967</b>  | <b>31973</b>                     |
| <b>Manufacturers:</b>                                       |   |  |                                  |
| Petroleum and other oils                                    | 613   | 7046   | 7659                             |
| Sugar -----   | -----                                       | 7327   | 7327                             |
| Naval stores -----  | 59  | 38   | 97                               |
| Iron, pig and bloom ----                                    | 273   | 6579   | 6852                             |
| Iron and Steel rails ----                                   | -----                                       | 237  | 237                              |
| Other castings and machinery -----                          | 602   | 1240   | 1842                             |
| Bar and sheet metal ----                                    | 716   | 4484   | 5200                             |
| Cement, brick and lime --                                   | 6279  | 2861   | 9140                             |
| Agricultural implements                                     | 502   | 449  | 951                              |
| Wagons, carriages, tools, etc. -----                        | 1084  | 1132   | 2216                             |
| Wines, liquors and beers -                                  | 4590  | 5039   | 9629                             |
| Household goods and furniture: -----                        | 691   | 600  | 1291                             |
| <b>Total -----</b>  | <b>15409</b>                                | <b>37032</b>   | <b>52441</b>                     |
| Merchandise -----   | 38973                                       | 66212  | 105185                           |
| Miscellaneous: Other commodities not mentioned above, ----- | 32979                                       | 59939  | 92918                            |
| <b>Total tonnage—State</b>                                  | <b>242544</b>                               | <b>324732</b>  | <b>567276</b>                    |

## CINCINNATI, FLEMINGSBURG &amp; SOUTHEASTERN R. R. CO.

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HISTORY.

Organized June 1st, 1905, under laws of Kentucky.

Covington, Flemingsburg and Ashland Railway Company was organized under laws of Kentucky, March 1st, 1876.

## DIRECTORS.

Atilla Cox, Sr., (deceased), Louisville, Ky.

C. D. Lanier, New York City, N. Y.

W. N. Cox, Louisville, Ky.

Atilla Cox, Jr., Louisville, Ky.

S. S. Bush, Sr., Louisville, Ky.

Florian Cox, Louisville, Ky.

S. S. Bush, Jr., Louisville, Ky.

## OFFICERS.

Atilla Cox, Sr. (deceased), President, Louisville, Ky.

S. S. Bush, Sr., Vice President, Louisville, Ky.

W. N. Cox, Secretary, Louisville, Ky.

S. S. Bush, Jr., Treasurer, Louisville, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital Stock: Number of shares authorized 1000, common. Par value of one share \$100. Total par value authorized \$100,000. Total par value outstanding \$100,000. Total par value not held by respondent corporation \$100,000.

Remarks: 500 shares outstanding common stock were issued for purchase of C. F. & A. Ry., 500 shares outstanding common stock were purchased for reorganization purposes.

Railway stocks owned—Active corporations—None.

Railway stocks owned—Inactive corporations—None.



IMPORTANT CHANGES DURING THE YEAR—STATE OF KENTUCKY: Decrease of 11.52 mile account of narrow gauge line between Flemingsburg and Hillsboro abandoned.

Line between Johnson, Ky. and Flemingsburg, Ky. rebuilt into standard gauge. Grades cut down, all trestles filled. All small waterways made into concrete culverts and two larger ones into concrete and wooden bridges.

\$75,000 first mortgage bonds issued.

\$15,000 first mortgage bonds held in treasury.

#### CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS WITHIN THE STATE OF KENTUCKY.

##### EXPRESS COMPANIES.

Adams Express Company—Merchandise between Johnson and Flemingsburg 16½ cents per hundred pounds. Specials between Johnson and Flemingsburg 7 cents per 100 pounds.

##### MAIL.

With U. S. Government (Mail Service) \$63.27 per mile, per year.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

| COMMODITY                                 | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|---|---|--|----------------------------------|
| Products of agriculture:                  |   |  |                                  |
| Grain -----                               |   | 154  | 154                              |
| Tobacco -----                             | 651   | -----  | 651                              |
| Total -----                               | 651   | 154  | 805                              |
| Products of animals:                      |   |  |                                  |
| Live stock -----                          | 951   | 46   | 977                              |
| Dressed meats -----                       | 65  | -----  | 65                               |
| Poultry, Game, and Fish -----             | 230   | -----  | 230                              |
| Wool -----                                | 10  | -----  | 10                               |
| Total -----                               | 1236  | 46   | 1282                             |
| Products of mines:                        |   |  |                                  |
| Bituminous Coal -----                     | -----                                       | 6170   | 6170                             |
| Stone, sand and other like articles ----- | -----                                       | 1200   | 1200                             |
| Total -----                               | -----                                       | 7370   | 7370                             |
| Products of forests:                      |   |  |                                  |
| Lumber -----                              | 1105  | -----  | 1105                             |
| Other products of forests -----           | 529   | -----  | 529                              |
| Total -----                               | 1634  | -----  | 1634                             |
| Manufacturers:                            |   |  |                                  |
| Other castings and machinery -----        | 13  | -----  | 13                               |
| Cement, brick and lime -----              | -----                                       | 435  | 435                              |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**  
**—Continued.**

| COMMODITY                                    | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Wagons, carriages, tools, etc. -----         | -----                                       | 10   | 10                               |
| Other manufactures, fertilizer and ice ----- | -----                                       | 800  | 800                              |
| Total -----                                  | 13  | 1245   | 1258                             |
| Merchandise -----                            | 204   | 2467   | 2671                             |
| Total tonnage—entire line                    | 3738  | 11282  | 15020                            |

**CENTRAL KENTUCKY TRACTION COMPANY.**

**HISTORY.**

A consolidated company of Central Kentucky Traction Company and Frankfort & Versailles Traction Company.

Central Kentucky Traction Company organized under the laws of Kentucky March 7, 1905; Frankfort & Versailles Traction Company organized under the laws of Kentucky October 26, 1903. Date of consolidation August 1, 1907.

## DIRECTORS.

Jno. Blair MacAfee, Philadelphia, Pa.  
J. Levering Jones, Philadelphia, Pa.  
Howard E. Young, Philadelphia, Pa.  
Theo. Harris, Versailles, Ky.  
J. M. Camden, Versailles, Ky.  
J. I. Noel, Frankfort, Ky.  
M. J. Meagher, Frankfort, Ky.  
I. N. Manning, Lexington, Ky.  
R. I. Stoll, Lexington, Ky.  
W. J. Laughridge, Lexington, Ky.

## OFFICERS.

Jno. Blair MacAfee, President, 3rd and Walnut, Philadelphia, Pa.  
T. D. Murray, Secretary, Lexington, Ky.  
J. W. Hall, Treasurer, Lexington, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 3,500 (common), 750 (preferred). Par value of one share \$100.00. Total par value authorized \$350,000 (common), \$75,000 (preferred) total \$425,000.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—Company's material excluded—No record kept.

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BLUE GRASS TRACTION CO.

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## HISTORY.

Organized 1902 under the laws of Kentucky.

Purchased the Georgetown & Lexington Traction Company February 26, 1904.

## DIRECTORS.

Jno. Blair MacAfee, Philadelphia, Pa.  
J. Levering Jones, Philadelphia, Pa.  
J. R. Downing, Georgetown, Ky.  
Desha Breckinridge, Lexington, Ky.  
J. E. Bassett, Lexington, Ky.  
Jno. R. Allen, Lexington, Ky.  
R. C. Stoll, Lexington, Ky.

## OFFICERS.

John Blair MacAfee, President, Philadelphia, Pa.  
T. D. Murray, Secretary, Lexington, Ky.  
J. W. Stoll, Treasurer, Lexington, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 7,000 (common).  
Par value of one share \$100.00. Total par value authorized \$700,000.  
Total par value outstanding \$700,000.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record kept.

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LOUISVILLE & NORTHERN RAILWAY & LIGHTING CO.

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Organized October 30, 1905 under the laws of the State of Indiana.

Operates on tracks of Louisville Railway Company (Kentucky).

## CINCINNATI, NEW ORLEANS &amp; TEXAS PACIFIC R. R. CO.

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HISTORY.

Organized September 8, 1881, under the laws of Ohio.

## DIRECTORS.

W. W. Finley, Washington, D. C.  
G. F. Brownell, New York, N. Y.  
F. D. Underwood, New York, N. Y.  
E. W. Kittridge, Cincinnati, Ohio.  
Lawrence Maxwell, Cincinnati, Ohio.  
M. E. Ingalls, Cincinnati, Ohio.  
B. S. Cunningham, Cincinnati, Ohio.  
C. A. Hensch, Cincinnati, Ohio.  
Fairfax Harrison, Washington, D. C.

## OFFICERS.

W. W. Finley, President, Washington, D. C.  
R. D. Lankford, Secretary, New York, N. Y.  
Chas. Patton, Treasurer, Cincinnati, Ohio.

## TRANSPORTATION CORPORATIONS CONTROLLED.

Sole owner of capital stock of the Harriman & Northeastern R. R.  
Sole owner of the Cincinnati, Burnside & Cumberland River  
Railway.

Joint owner of the capital stock of the Chattanooga Station Company, to the extent of 25 per cent. Other parties to agreement are: A. G. S. R. R. Co.; Central of Georgia Ry. Co.; Southern Ry. Co.

## OUTSIDE OPERATIONS

Dining car lines. Character of business: Dining and Cafe cars. Title: Owned and leased. States of: Ohio, Kentucky, Tennessee, Georgia, Alabama, Mississippi, Louisiana, and Florida. Ohio River Bridge. Character of Business: Footway. Title: Owned. States of Ohio and Kentucky.

## ROAD ACQUIRED THROUGH LEASE OR OTHER AGREEMENT.

Name of owning company: Trustees Cincinnati; Southern Rail-

way. Miles of lines 33,564. Date: October 11, 1906. Term: 60 years. Concise summary of provisions: Rental of : 1,050,000 for first 20 years; 1,100,000 for second 20 years; 1,200,000 for third 20 years. Lessee also pays taxes and maintains property; pays  $3\frac{1}{2}$  per cent. interest on \$2,500,000 of Terminal Bonds, and provides 10 per cent. annually as sinking fund for their retirement at maturity.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 30,000 (common), 30,000 (preferred), total 60,000. Par value of one share \$100.00. Total par value authorized \$3,000,000 (common), \$3,000,000 (preferred), total \$6,000,000. Total par value outstanding \$3,000,000 (common), \$2,453,400 (preferred), total \$5,453,400. Total par value not held by respondent corporation \$3,000,000 (common), \$2,453,400 (preferred), total \$5,453,400. Dividends declared during the year: rate 5 per cent (common), 5 per cent. (preferred); amount \$150,000.00 (common), \$118,889.17 (preferred), total \$268,889.17.

Remarks: 4,534 shares preferred stock issued during year 1909, for cash, realizing \$453,400. 30,000 shares of common stock and 24,534 shares of preferred outstanding issued for cash, realizing total of \$5,453,400 cash.

Railway stocks owned—active corporations:

Stocks of corporations whose property does not form a part of the system of respondent corporations:

Cincinnati, Cumberland River Railway Company \$150,000.00 unpledged. Dividends declared, 4 per cent., amount \$10,000.00. Valuation of stocks owned, \$110,000.00.

Harriman & Northeastern Railroad Company, \$600,000.00 unpledged. Dividends declared, 2 per cent., amount \$12,000.00. Valuation \$200,000.00.

\*Chattanooga Station Company, valuation of stock owned \$1.00.

\*Stock not issued, but carried on books at \$1.00 valuation.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record kept.

## TENNESSEE CENTRAL RAILROAD COMPANY.

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HISTORY.

Organized October 20, 1901 under the laws of Tennessee.

## DIRECTORS.

H. Clay Pierce, New York City.

Eben Richards, New York City.

S. M. Felton, New York City.

S. W. Fordyce, Jr., St. Louis, Mo.

J. D. Richards, Nashville, Tenn.

J. W. Lellyett, Nashville, Tenn.

W. D. Witherspoon, Nashville, Tenn.

## OFFICERS.

S. M. Felton, Chairman of Board, New York City.

C. E. Norton, Secretary, Nashville, Tenn.

J. T. Howell, Treasurer, Nashville, Tenn.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 80,000 (common).  
Par value of one share \$100.00. Total par value authorized \$8,000,000.  
Total par value outstanding \$8,000,000. Total par value held by respondent corporation \$8,000,000.

Remarks: 80,000 shares outstanding common stock was issued for purchase of railway or other property. No cash being realized.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS  
WITHIN THE STATE OF KENTUCKY.

## EXPRESS COMPANIES.

American Express Company—to handle business between Nashville, Tenn. and Hopkinsville, Ky.



# FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY (Company's Material Excluded.)

| COMMODITY                           | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|-------------------------------------|---|--|----------------------------------|
| Products of agriculture:            |   |  |                                  |
| Grain -----                         | 1,055                                       | 1,578  | 2,633                            |
| Flour -----                         | 664   | 469  | 1,133                            |
| Other mill products -----           | 304   | 134  | 438                              |
| Hay -----                           | 316   | 276  | 592                              |
| Tobacco -----                       | 613   | 177  | 790                              |
| Cotton -----                        | 23  | 3  | 26                               |
| Fruits and vegetables -----         | 38  | 233  | 271                              |
| Other products of agriculture ----- | 80  | 143  | 223                              |
| Total -----                         | 3,093                                       | 3,013  | 6,106                            |
| Products of animals:                |   |  |                                  |
| Live stock -----                    | 495   | 6  | 501                              |
| Dressed meats -----                 | 5   | 1  | 6                                |
| Other packing-house products -----  | 131   | 113  | 244                              |
| Poultry, game and fish --           | 34  | 20   | 54                               |
| Wool -----                          | 11  | -----  | 11                               |
| Hides and leather -----             | 46  | 21   | 67                               |
| Other products of animals           | 2   | 11   | 13                               |
| Total -----                         | 724   | 172  | 896                              |
| Products of mines:                  |   |  |                                  |
| Bituminous coal -----               | 5,666                                       | 2,997  | 8,663                            |
| Coke -----                          | 48  | 3,125  | 3,173                            |
| Ores -----                          | 6,534                                       | 9  | 6,543                            |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
 (Company's Material Excluded.)  
 —Continued.

| COMMODITY                                 | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|---|---|--|----------------------------------|
| Stone, sand and other like articles ----- | 176   | 505  | 681                              |
| Other products of mines -                 | 5   | 29   | 34                               |
| Total -----                               | 12,429                                      | 6,665  | 19,094                           |
| Products of forests:                      |   |  |                                  |
| Lumber -----                              | 5128  | 418  | 5546                             |
| Other products of forests                 | 4443  | 18   | 4461                             |
| Total -----                               | 9571  | 436  | 10007                            |
| Manufactures:                             |   |  |                                  |
| Petroleum and other oils..                | 40  | 240  | 280                              |
| Sugar -----                               | 74  | 530  | 604                              |
| Naval stores -----                        | 18  | 37   | 55                               |
| Iron, pig and bloom ----                  | 668   | 112  | 780                              |
| Iron and steel rails ----                 | 7   | 177  | 184                              |
| Other castings and machinery -----        | 101   | 282  | 383                              |
| Bar and sheet metal ----                  | 128   | 362  | 490                              |
| Cement, brick and lime---                 | 459   | 609  | 1,068                            |
| Wagons, carriages, tools, etc. -----      | 23  | 97   | 120                              |
| Wines, liquors and beers                  | 6   | 144  | 150                              |
| Household goods and furniture -----       | 67  | 55   | 122                              |
| Other manufactures ----                   | 763   | 1,434  | 2,197                            |
| Total -----                               | 2,373                                       | 4,219  | 6,592                            |

FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.  
(Company's Material Excluded.)

—Continued.

| COMMODITY  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Merchandise -----  | 1,693                                       | 1,236  | 2,929                            |
| Miscellaneous: Other commodities not mentioned above ----- | 219   | 14   | 233                              |
| Total tonnage—State ---                                    | 30,102                                      | 15,755   | 45,857                           |
| Total tonnage—entire line                                  | 602,076                                     | 315,122  | 917,198                          |
|  |   |  |                                  |
|  |   |  |                                  |

RED RIVER VALLEY RAILROAD COMPANY.

HISTORY.

Organized under the laws of Kentucky.

DIRECTORS.

J. W. McCausey, Detroit, Mich.

W. O. Hughart, Secy. and Treas., Grand Rapids, Mich.

A. L. French, Indianapolis, Ind.

## OFFICERS.

J. W. McCausey, President, Detroit, Mich.

F. O. Hughart, Secy. and Treas., Grand Rapids, Mich.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired for operation through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized 250 (common).  
Par value of one share \$100.00. Total par value authorized \$25,000.  
Total par value outstanding \$25,000.

Remarks: 250 shares common stock outstanding, were issued for construction of new properties, realizing \$25,000 cash.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record kept.

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KENTUCKY & INDIANA BRIDGE & RAILROAD COMPANY.

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HISTORY.

Organized August 8, 1900, under the laws of Kentucky and Indiana.

## DIRECTORS.

W. H. McDood, Chicago, Ill.

C. C. F. Bent, Cincinnati, Ohio.

T. C. Powell, Cincinnati, Ohio.

Judson Harmon, Cincinnati, Ohio.

A. P. Humphrey, Louisville, Ky.

E. F. Trabue, Louisville, Ky.

## OFFICERS.

C. C. F. Bent, President, Cincinnati, Ohio.  
H. W. Heaclitt, Secy. and Treas. Louisville, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired through lease or other agreement—None.

Road assigned to another carrier through lease or other agreement—None.

Capital stock: Number of shares authorized, 750 (common).  
Par value of one share \$100.00. Total par value authorized \$75,000.  
Total par value outstanding \$75,000.

Remarks: No stock sold.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record kept.

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CINCINNATI, BURNSIDE & CUMBERLAND RIVER RY. CO.

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HISTORY.

Organized August 10, 1905 under the laws of Kentucky.

One mile of road operated by C. N. O. & T. P. Ry. Co.

## DIRECTORS.

T. C. Powell, Cincinnati, Ohio.

M. F. Malloy, Cincinnati, Ohio.

A. Telford, Cincinnati, Ohio.

H. Baker, Cincinnati, Ohio.

O. H. Waddle, Somerset, Ky.

Fairfax Harrison, Washington, D. C.

R. D. Lankford, New York, N. Y.

## OFFICERS.

T. C. Powell, President, Cincinnati, Ohio.  
A Telford, Secy. and Treas., Cincinnati, Ohio.

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## MAMMOTH CAVE RAILROAD CO.

## HISTORY.

Organized 1884. Re-organized 1900, under the laws of Kentucky.

## DIRECTORS.

Geo. H. Patterson, Franklin, Ky.  
R. H. Lacey, Franklin, Ky.  
John B. Finn, Franklin, Ky.  
Geo. C. Harris, Franklin, Ky.  
L. P. Lacey, Franklin, Ky.

## OFFICERS.

R. H. Lacey, President, Franklin, Ky.  
Geo. H. Patterson, Vice-President, Franklin, Ky.  
Geo. H. Patterson, Secretary, Franklin, Ky.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired for operation through lease or other agreement—None.

Road assigned to another carrier for operation through lease or other agreement—None.

Capital stock: \$16,000.

Railway stocks owned—active corporations—None.

Railway stocks owned—inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within the State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record kept.

## MOBILE &amp; OHIO RAILROAD COMPANY.

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HISTORY.

Organized June 7, 1848, under the laws of Alabama. Approved February 3, 1848. Mississippi approved February 17, 1848 (amended March 5, 1880, acts Mississippi Legislature 1880). Tennessee approved February 28, 1848. Kentucky approved February 26, 1848.

## DIRECTORS.

Wm. Butler Duncan, New York City.  
W. W. Finley, Washington, D. C.  
Fairfax Harrison, Washington, D. C.  
C. C. Cuyler, New York City,  
Adrian Iselin, Jr., New York City.  
Thos. E. Jevins, New York City.  
W. Emlen Roosevelt, New York City.  
A. H. Stevens, New York City.  
Samuel Woolverton, New York City.  
R. D. Lankford, New York City.  
C. Sidney Shepard, New Haven, N. Y.  
E. L. Russell, Mobile, Ala.  
E. J. Buck, Mobile, Ala.

## OFFICERS.

W. W. Finley, President, Washington, D. C.  
Henry Tacon, Secy. and Treas., Mobile, Ala.

Transportation corporations controlled:—St. Louis & Cairo R. R.  
Outside operations—Dining cars, dining car service, owned—  
Various States.

Road acquired by respondent for operation through lease or other agreement—Name of owning company: St. Louis & Cairo Railroad.  
Miles of line: 15,860. Date February 1, 1886. Term 45 years.

Concise summary of provisions: This company has leased the St. Louis and Cairo Railroad subject to certain conditions as to a

division of the earnings of both lines, net proportion accruing to the St. Louis & Cairo Railroad not to be less than \$165,000 per annum.

Capital Stock: Number of shares authorized 100,000, common. Par value of one share \$100.00. Total par value authorized \$10,000,000. Total par value outstanding \$7,730,000. In treasury \$1,709,400. Total par value not held by respondent corporation \$6,026,000. Dividends declared during year; rate, 5 per cent.

#### RAILWAY STOCKS OWNED—ACTIVE CORPORATIONS.

Stocks of respondent corporation: Mobile and Ohio Railroad Company Stock received from the Mobile & Bay Shore Railway. Par value of stocks owned not held in sinking or other funds; \$5,000,000, unpledged. Valuation \$5,000,000.

Mobile & Ohio Railroad Capital Stock in reserve. Par value of stocks owned not held in sinking or other funds; \$165,940,000, unpledged. Valuation \$165,940,000.

STOCKS OF CORPORATIONS whose property forms a part of the system of respondent corporation: St. Louis & Cairo R. R. Co. Par value of stocks owned not held in sinking or other funds; \$649,500,000, pledged. Rate  $1\frac{1}{2}$ . Dividends declared \$9,742,500. Valuation \$216,500,000.

STOCK OF CORPORATIONS whose property does not form a part of the system of respondent corporation: Alabama, New Orleans, Texas & Pacific Junction Railway Co. Par value of stocks owned not held in sinking or other funds \$212,736,250, pledged. Valuation \$69,878,879.

Gulf Terminal Company. Par value of stocks owned not held in sinking or other funds 2,300,000, unpledged. Rate 4. Dividends declared \$57,833. Valuation \$2,300,000.

Meridian Terminal Company. Par value of stocks not held in sinking or other funds \$1,780,000, unpledged. Rate 4. Dividends declared \$71,200. Valuation \$1,780,000.

Total par value of stocks owned not held in sinking or other funds \$387,756,250, unpledged; \$649,500,000. Dividends declared \$9,871,533. Valuation \$461,398,879.

RAILROAD STOCKS OWNED. Inactive corporations. Name of corporation: Warrior Southern Railway. Name of security stock. Total par value of stock outstanding \$30,000,000. Par value of stocks



owned \$30,000,000, unpledged. Valuation of stocks owned \$9,500,000

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within State of Kentucky—None.

Freight traffic movement—State of Kentucky—No record.

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## CARROLLTON & WORTHVILLE RAILROAD COMPANY.

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### HISTORY.

Organized April, 1905, under the laws of Kentucky.

### DIRECTORS.

G. D. Crain, Louisville, Ky.  
C. E. Davis, Lexington, Ky.  
H. E. Randall, Louisville, Ky.  
Thos. C. Snively, Louisville, Ky.  
A. Z. Boyer, Louisville, Ky.  
J. J. C. Watson, Louisville, Ky.  
James Gayle, Carrollton, Ky.

### OFFICERS.

H. E. Randall, President, Carrollton, Ky.  
James Gayle, Secy. and Treas., Carrollton, Ky.

Transportation Corporations Controlled—None.

Outside operations—None.

Road acquired for operation through lease or other agreement—None.

Road assigned to another carrier for operation through lease or other agreement—None.

Capital stock—\$50,000.

Railway stocks owned—Active corporations—None; Inactive corporations—None.

Important changes during the year—State of Kentucky—None.

Contracts, agreements, etc., affecting business—within State of Kentucky—None.

Freight traffic movement State of Kentucky—No record.

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## BIG SANDY & CUMBERLAND RAILWAY COMPANY.

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### HISTORY.

Organized January 25, 1900, under laws of Kentucky.

### DIRECTORS.

Wm. Ritter, Columbus, Ohio.  
Isaac T. Mann, Bramwell, West Va.  
Edwin Mann, Bluefield, West Va.  
James L. Hamill, Columbus, Ohio.  
J. W. Barr, Norfolk, Virginia.

### OFFICERS.

W. M. Ritter, President, Columbus, Ohio.  
James L. Hamill, Secretary, Columbus, Ohio.  
C. B. Weakley, Treasurer, Columbus, Ohio.  
Transportation corporations controlled—None.  
Outside operations—None.  
Road acquired for operation through lease or other agreement—None.  
Road assigned to another carrier for operation through lease or other agreement—None.  
Capital stock—\$100,000.

Railway stocks owned—Active corporations—None; Inactive corporations—None.

Important changes during the year State of Kentucky—None.

Contracts, agreements, etc., affecting business within State of Kentucky—None.

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
(Company's Material Excluded.)

| COMMODITY                           | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|-------------------------------------|---|--|----------------------------------|
| Products of agriculture:            |   |  |                                  |
| Grain -----                         | 149   | 32   | 181                              |
| Flour -----                         | 80  | 36   | 116                              |
| Other mill products ----            | 51  | 5  | 56                               |
| Hay -----                           | 201   | 54   | 255                              |
| Fruit and vegetables ----           | 11  | 2  | 13                               |
| Other products of agriculture ----- | 3   | 1  | 4                                |
| Total -----                         | 495   | 130  | 625                              |
| Products of animals:                |   |  |                                  |
| Dressed meats -----                 | 15  | 4  | 19                               |
| Other Packing-house products -----  | 17  | 9  | 26                               |
| Poultry, game and fish --           | 2   | 1  | 3                                |
| Total -----                         | 34  | 14   | 48                               |
| Products of mines:                  |   |  |                                  |
| Anthracite coal -----               | -----                                       | 8000   | 8000                             |
| Total -----                         | -----                                       | 8000   | 8000                             |

## FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.

(Company's Material Excluded.)

—Continued.

| COMMODITY  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Products of forests:                                 |   |  |                                  |
| Lumber -----   | 35000                                       | -----  | 35000                            |
| Total -----  | 35000                                       | -----  | 35000                            |
| Manufactures:  |   |  |                                  |
| Petroleum and other oils                             | 4   | -----  | 4                                |
| Sugar -----  | 4   | 3  | 7                                |
| Iron and steel rails -----                           | 50  | 10   | 60                               |
| Other castings and machinery -----                   | 2   | 2  | 4                                |
| Bar and sheet metal -----                            | 0   | 0  | 0                                |
| Brick, lime and cement --                            | 1   | 0  | 1                                |
| Wagon, carriages, tools, etc. -----                  | 1   | 1  | 2                                |
| Household goods and furniture -----                  | 18  | 1  | 19                               |
| Total -----  | 80  | 17   | 97                               |
| Miscellaneous: Other commodities not mentioned above | 1   | 4  | 5                                |
| Total tonnage—State                                  | 81  | 21   | 95                               |
| Total tonnage—entire line                            | 35610                                       | 8165   | 43775                            |

## CUMBERLAND RAILROAD COMPANY.

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HISTORY.

Organized June 30, 1902, under laws of Kentucky.

## DIRECTORS.

C. W. Stone, President, Warren, Pa.  
L. R. Freeman, Warren, Pa.  
W. M. Lindsay, Warren, Pa.  
A. J. Hazeltine, Warren, Pa.  
C. B. Ayers, Warren, Pa.  
G. H. Dunham, Warren, Pa.  
F. F. Whittekin, Pennsylvania.

## OFFICERS.

C. W. Stone, President, Warren, Pa.  
L. R. Freeman, Vice President, Warren, Pa.  
R. W. Stone, Secretary, Warren, Pa.  
A. J. Hazeltine, Treasurer, Warren, Pa.

Transportation corporations controlled—None.

Outside operations—None.

Road acquired for operation through lease or other agreement—None.

Road assigned to another carrier for operation through lease or other agreement—None.

Capital stock—\$100,000.

Total par value outstanding—\$20,999.

Total par value authorized—\$100,000.

## RAILWAY STOCKS OWNED.

1. Active corporations—None.

11. Inactive corporations—None.

Important changes during year—State of Kentucky—None.

Contracts, agreements, etc., affecting business within State of Kentucky.

## MAILS.

Effective July 1st, 1908, the compensation for the transportation of mails, etc., over the Cumberland R. R., Route 129064, Artemus to Warren, Ky., was fixed at \$357.81 per annum to June 30, 1912, by the Post Office Department.

## OTHER CONTRACTS.

In July, 1908, an additional passenger coach No. 12 was rented at \$3.00 per day. In March, 1909, an additional locomotive was rented at \$10.00 per day. Both from the Southern Ry. Co., only \$5.00 per day was paid to June 30, 1909, on bills rendered for the locomotive.

FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.  
(Company's Material Excluded.)

| COMMODITY                          | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|------------------------------------|---|--|----------------------------------|
| Products of agriculture:           |   |  |                                  |
| Grain -----                        | 20  | 116  | 136                              |
| Flour -----                        | 28  | 93   | 121                              |
| Other mill products ----           | 16  | 82   | 98                               |
| Hay -----                          | 11  | 134  | 145                              |
| Fruit and vegetables ----          | 2   | 40   | 42                               |
| Total -----                        | -----                                       | -----  | 542                              |
| Products of animals:               |   |  |                                  |
| Dressed meats -----                | 2   | 17   | 19                               |
| Other packing-house products ----- | 6   | 35   | 41                               |
| Total -----                        | -----                                       | -----  | 60                               |

# FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY. (Company's Material Excluded.)

—Continued.

| COMMODITY                                  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tonnage |
|--|---|--|-------------------------------------|
| Products of mines:                         |   |  |                                     |
| Bituminous coal -----                      | 135046                                      | -----  | 135046                              |
| Stone, sand, and other like articles ----- | 85  | 25   | 110                                 |
| Total -----                                | -----                                       | -----  | 135156                              |
| Products of forests:                       |   |  |                                     |
| Lumber -----                               | 241   | 308  | 549                                 |
| Other products of forests -----            | 164   | 18   | 182                                 |
| Total -----                                | -----                                       | -----  | 731                                 |
| Manufactures:                              |   |  |                                     |
| Petroleum and other oils -----             | 8   | 53   | 61                                  |
| Iron and steel rails ----                  | 51  | 180  | 231                                 |
| Other castings and machinery -----         | 44  | 447  | 491                                 |
| Cement, brick and lime --                  | 1   | 468  | 469                                 |
| Wines, liquors, and beers -----            | -----                                       | 30   | 30                                  |
| Household goods and furniture -----        | 132   | 54   | 186                                 |
| Other manufactures ----                    | 53  | 340  | 393                                 |
| Total -----                                | -----                                       | -----  | 1861                                |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

—Continued.

| COMMODITY  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Merchandise -----                                    | 24  | 311  | 335                              |
| Miscellaneous: Other commodities not mentioned above | 34  | 40   | 74                               |
| Total tonnage—entire line                            | 135968                                      | 2791   | 138759                           |
| Total tonnage—entire line                            | 135968                                      | 2791   | 138759                           |

**LOUISVILLE & JEFFERSONVILLE BRIDGE COMPANY.**

**HISTORY.**

Organized August 3, 1887, under laws of Indiana, and amended articles by Act of Kentucky, approved February 20, 1888. Louisville & Jeffersonville Bridge Co., of Kentucky and Louisville and Jeffersonville Bridge Co., of Indiana, consolidated April 25th, 1890, as the "Louisville & Jeffersonville Bridge Co.," under Act of Kentucky approved March 26, 1890. Company operated by C. C. C. & St. L. Ry. Co.

**DIRECTORS.**

Alexander P. Humphrey, Louisville, Ky.  
 Geo. W. Stevens, Richmond, Va.  
 C. E. Schaff, Chicago, Ill.  
 J. Q. Van Winkle, Cincinnati, Ohio.  
 C. E. Doyle, Richmond, Va.



## OFFICERS.

Alexander P. Humphrey, President, Louisville, Ky.

M. L. Akers, Secretary, Louisville, Ky.

C. L. Warriner, Treasurer, Cincinnati, Ohio.

Transportation corporations controlled—None.

Capital stock—\$1,500,000—Has no market value.

## IMPORTANT CHANGES DURING THE YEAR—STATE OF KENTUCKY.

\$1,000,000.00 of bonds issued and sold to take up obligations incurred in providing additional needed facilities and to further facilities in the future.

## CONTRACTS, AGREEMENTS, ETC., AFFECTING BUSINESS WITHIN THE STATE OF KENTUCKY.

The stock of the L. & J. Bridge Co., is owned; Big Four 2-3 and C. & O. 1-3. This practically makes it a joint terminal for both of those roads.

The Big Four keeps the accounts and each month makes a bill against the C. & O. for its proportion of the expenses based on business handled.

Tolls on all business crossing the Bridge are computed according to existing tariffs and the amount so realized is applied to the annual interest on the bonds. If the tolls do not meet the interest charge the deficit is made up by and apportioned between the two roads according to business handled over the bridge and through the terminals.

Aside from this simple arrangement the only other contract affecting the Company to any extent is one executed between this Company and the Louisville and Southern Indiana Traction Company under date November 1, 1902.

(and supplements dated March 20, 1903, February 25, 1904, September 19, 1904 and January 23, 1907), whereby the Traction Company was granted the right to run its cars across this Company's bridge at a rental of one and one-quarter cent per passenger carried.

## ILLIONIS CENTRAL RAILROAD COMPANY.

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HISTORY.

Organized February 10, 1851, under the laws of Illinois.

## DIRECTORS.

His Excellency—Chas. S. Deneen, Governor of Illinois, Ex-Officio,  
Springfield, Ill.

Walther Luttgen, New York City.

John W. Auckinclass, New York City.

Robert Walton Goelet, Newport, R. I.

J. T. Harahan, Chicago.

Cornelius Vanderbilt, New York City.

\*Edward H. Harriman, New York City.

John Jacob Astor, New York City.

J. Ogden Armour, Chicago.

Charles A. Peabody, New York City.

John G. Shedd, Chicago.

Alexander G. Huckstaff, New York City.

## OFFICERS.

J. T. Harahan, President, Chicago, Ill.

J. G. Rawn, Vice-President, Chicago, Ill.

A. G. Huckstaff, Vice-President and Secretary, New York City.

E. T. H. Gibson, Treasurer, New York City.

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\*Deceased.

## TRANSPORTATION CORPORATIONS CONTROLLED.

| NAME.  | CONTROL.      |                 |        |  | Direct or Indirect | Indirect Name of Intermediary Thru which Control is Established |
|--|---------------|-----------------|--------|--|--------------------|---|
|  | Sole or Joint | How Established | Extent |  |                    |   |
| ACTIVE CORPORATIONS:                           |               |                 |        |  |                    |   |
| Chicago, St. Louis & New Orleans R. R. Co.---  | Sole          | Stock ownership | 99% +  |  | Direct             |   |
| Dubuque & Sioux City R. R. Co. -----           | Sole          | Stock ownership | 99% +  |  | Direct             |   |
| Indianapolis Southern R. R. Co. -----          | Sole          | Stock ownership | 68% +  |  | Direct             |   |
| Kensington & Eastern R. R. Co. -----           | Sole          | Stock ownership | 100% + |  | Indirect           | Miss. Val. Co.  |
| Omaha Bridge & Terminal Co. -----              | Sole          | Stock ownership | 100% + |  | Indirect           | Miss. Val. Co.  |
| St. Louis, Belleville & Southern R. R. Co.---  | Sole          | Stock ownership | 100% + |  | Indirect           | Miss. Val. Co.  |
| Yazoo & Mississippi Valley R. R. Co. -----     | Sole          | Stock ownership | 94% +  |  | Indirect           | Miss. Val. Co.  |
| Birmingham Terminal Co. -----                  | Joint         | Stock ownership | 16% +  |  | Indirect           | Miss. Val. Co.  |
| Peoria & Pekin Union Ry. Co. -----             | Joint         | Stock ownership | 25%    |  | Direct             |   |
| Southern Illinois & Missouri Bridge Co. -----  | Joint         | Stock ownership | 20%    |  | Indirect           | Miss. Val. Co.  |
| Terminal R. R. Association of St. Louis -----  | Joint         | Stock ownership | 7%     |  | Direct             |   |
| Chicago Union Transfer Ry. Co. -----           | Joint         | Stock ownership | 4%     |  | Direct             |   |
| Dunleith & Dubuque Bridge Co. -----            | Sole          | Stock ownership | 100%   |  | Indirect           | Miss. Val. Co.  |
| Louisville, New Orleans & Texas Ry. of Ark.--- | Sole          | Stock ownership | 100%   |  | Indirect           | Miss. Val. Co.  |
| INACTIVE CORPORATIONS:                         |               |                 |        |  |                    |   |
| Canton, Aberdeen & Nashville R. R. in Ala.---  | Sole          | Stock ownership | 100%   |  | Indirect           | Miss. Val. Co.  |
| Kensington & Eastern R. R. of Indiana -----    | Sole          | Stock ownership | 100%   |  | Indirect           | Miss. Val. Co.  |
| Leland South Western R. R. Co. -----           | Sole          | Stock ownership | 100%   |  | Indirect           | Miss. Val. Co.  |
| Meridian, Brookhaven & Natches R. R. -----     | Sole          | Stock ownership | 100%   |  | Indirect           | Miss. Val. Co.  |
| Minter City & South West R. R. Co. -----       | Sole          | Stock ownership | 100%   |  | Indirect           | Miss. Val. Co.  |

|  |      |                 |      |          |                 |
|--|------|-----------------|------|----------|-----------------|
| St. Louis, Alton & Terre Haute R. R. Co. ----- | Sole | Stock ownership | 99%  | Indirect | Miss. Val. Cor. |
| Alabama Western R. R. Co. -----                | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| Blue Island R. R. Co. -----                    | Sole | Stock ownership | 100% | Direct   |                 |
| Bloomington Southern R. R. Co. -----           | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| Canton, Aberdeen & Nashville R. R. Co. -----   | Sole | Stock ownership | 100% | Indirect | Miss. Val. Co.  |
| Helen & Northwestern R. R. Co. -----           | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| Jackson & Southeastern R. R. Co. -----         | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| Mississippi & Alabama R. R. Co. -----          | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| Paducah Union Depot -----                      | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| South Chicago R. R. Co. -----                  | Sole | Stock ownership | 100% | Direct   |                 |
| Sunflower & Eastern R. R. Co. -----            | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| Baton Rouge, Hammond & Eastern R. R. Co. ----- | Sole | Stock ownership | 100% | Indirect | Miss. Val. Cor. |
| Chicago & Illinois Southern R. R. -----        | Sole | Stock ownership | 100% | Direct   |                 |
| Kentucky Valley R. R. Co. -----                | Sole | Stock ownership | 100% | Direct   |                 |

OUTSIDE OPERATIONS: Dining and special cars, hotels and restaurants. Character of business: Furnishing meals. Various States.

ROAD ACQUIRED FOR OPERATION THROUGH LEASE OR  
OTHER AGREEMENT.

Name of owning company: Louisville & Nashville R. R. Co. Miles of line: 20.56. Date: January 16, 1892. Term: 99 years with privilege to renew in perpetuity. Concise summary of provisions: To pay expenses of maintenance, taxes also 5 per cent per annum on a valuation of the property fixed at \$240,794.25.

ROAD ASSIGNED TO ANOTHER CARRIER FOR OPERA-  
TION THROUGH LEASE OR OTHER AGREEMENT.

Name of operating company: Pearl River Lumber Company, Termini; from Brookhaven, Miss., to end of line near Nola, Miss. Miles of line 14.84. Date: June 11, 1904. Term: 20 years. Concise summary of provisions: To pay \$7,185.86 per annum and to maintain the railroad. Also to pay 6 per cent per annum on track material furnished for extension of line to Monticello, Miss. Under date of January 17, 1905, consent was given the lessees to assign to the Brookhaven & Pearl River Ry. Co., the right to operate the railroad.

Name of operating company. Wisconsin Central R. R. Co. Termini; from Riverside Jct., Ill. to Harlem, Ill. Miles of line: 2.15 Date December 4, 1899. January 1, 2000. Concise summary of provisions: The lessee to pay 5 per cent on cost of construction together with expenses of maintenance and operations.

Capital Stock: Number of shares authorized 1,235,520, common. Par value of one share \$100. Total par value authorized \$123,552,000. Total par value outstanding \$109,296,000. Total par value held by respondent corporation in treasury \$22,040. Total par value not held by respondent corporation \$109,273,960. Dividends declared during year; rate 7 per cent.

Remarks: 142,560 shares common stock issued during year 1909, realizing \$14,256,000. 1,235,520 shares common stock outstanding were issued for cash realizing \$110,066,386.03.

## RAILROAD STOCKS OWNED—ACTIVE CORPORATIONS.

| NAME OF CORPORATION AND SECURITY  | Par Value of Stocks Owned not Held in Sinking or Other Funds | Rate  | Dividends Declared | Valuation     |
|---|--|-------|--------------------|---------------|
| Stocks of respondent corporation:   |  |       |                    |               |
| Illinois Central R. R. Co.-----   | 2,204,000  | 7 %   | -----              | 2,204,000     |
| Stocks of corporations whose property forms a part of the system of respondent corporation:         |  |       |                    |               |
| Dubuque & Sioux City R. R. Co.---   | 1,172,620,000  | 3½ %  | 41,041,700         | 684,088,902   |
| Peoria & Pekin Union Ry. Co.---   | 25,000,000   | ----- | -----              | 20,320,000    |
| Chicago, St. Louis & New Orleans R. R. Co.-----   | 1,020,000  | 4 %   | 40,800             | 1,020,000     |
| Stocks of corporations whose property does not form a part of the system of respondent corporation: |  |       |                    |               |
| Chicago Union Transfer Ry. Co.---   | 8,000,000  | ----- | -----              | 4,000,000     |
| Indianapolis Southern R. R. Co.---  | 137,540,000  | ----- | -----              | 7,108,000     |
| Yazoo & Mississippi Valley R. R. Co.-----   | 55,840,000   | ----- | -----              | 100           |
| Terminal R. R. Association of St. Louis -----   | 20,580,000   | ----- | -----              | 100           |
| Central of Georgia Ry. Co.-----   | 499,850,000  | ----- | -----              | 347,424,902   |
| Total -----   | 1,922,654,000  | ----- | 41,082,500         | 1,066,166,004 |

## RAILWAY STOCKS OWNED—INACTIVE CORPORATIONS.

| NAME OF CORPORATION   | Total Par Value of<br>Stocks Outstanding | PAR VALUE OF STOCKS OWNED |             | Valuation of<br>Stocks Owned |
|---|--|---------------------------|-------------|------------------------------|
|   |  | Unpledged                 | Pledged     |                              |
| St. Louis, Alton & Terre Haute<br>R. R. Co.-----<br>The property of this company has<br>been acquired by the Illinois<br>Central R. R. Co., and is now<br>known as its "St. Louis Divi-<br>sion." The corporation has,<br>therefore, ceased to exist for all<br>practical purposes.<br>In addition to the above the following<br>stock is also owned:<br>Chicago & Illinois Southern R. R.<br>Co. -----<br>Kentucky Valley R. R. Co.----- | 347,080,000                              | 70,000                    | 346,850,000 | 49,787                       |
|   | 50,000                                   | 50,000                    | -----       | No Value                     |
|   | 10,000,000                               | 10,000,000                | -----       | 100                          |
| Total -----   | 357,130,000                              | 10,120,000                | 346,850,000 | 49,887                       |

## IMPORTANT CHANGES DURING THE YEAR—STATE OF KENTUCKY.

L. & N. R. R. operated under trackage rights, Indiana State line to Henderson 1.43 miles.

Control acquired through stock ownership, of Kentucky Valley Railroad, Wheatcroft, Ky. to Providence, Ky. 9.83 miles.

6.33 miles of main track mileage, Indiana State Line to Henderson, transferred to sidings.

July 1, 1908, lease surrendered, Tennessee Central R. R., Hopkinsville, Ky., to Nashville, Tenn., 84.64 miles.

### CONTRACTS, AGREEMENTS, ETC.:

The American Express Company handles freight properly belonging to express business and pays the Railroad Company an agreed percentage of its gross receipts.

Compensation is fixed by the Post Office Department based on weight of mail taken every four years, additional allowance being made for postal cars.

Contract made June 1891 with the Pullman Company for use of their sleeping cars for twenty-five years the Pullman Company to furnish the sleeping cars, and the Railroad Company paying the usual mileage rates.

No preference is given to freight cars or freight handled by any transportation company or line. To each company we pay the usual mileage.

Agreement with the Cleveland, Cincinnati, Chicago, St. Louis Railway Company for handling passenger and freight traffic between Chicago and Cincinnati, Louisville, Indianapolis and Lafayette. Passenger receipts are divided on mileage basis and receipts from freight upon agreed percentage.

Agreement with the Western Union Telegraph Company and the Postal Telegraph Cable Company upon the usual basis of such contracts. The Telegraph Company in each case taking the receipts and furnishing the material and supplies and the Railroad Company supplying one half the labor.

Usual contracts with Telephone Companies for service at prominent points.



**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

| COMMODITY                                  | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--|---|--|----------------------------------|
| Products of agriculture:                   |   |  |                                  |
| Grain -----                                | 192,972                                     | 579,939  | 772,911                          |
| Flour -----                                | 49,340                                      | 101,848  | 151,188                          |
| Other mill products---                     | 38,518                                      | 167,029  | 205,547                          |
| Hay -----                                  | 35,812                                      | 80,517   | 116,329                          |
| Tobacco -----                              | 31,771                                      | 8,335  | 40,106                           |
| Cotton -----                               | 164,642                                     | 65,268   | 229,910                          |
| Fruit and vegetables --                    | 25,163                                      | 254,484  | 279,647                          |
| Total -----                                | 538,218                                     | 1,257,420  | 1,795,638                        |
| Products of animals:                       |   |  |                                  |
| Live stock -----                           | 41,523                                      | 15,403   | 56,926                           |
| Other packing - house products -----       | 10,523                                      | 129,659  | 140,182                          |
| Poultry, game and fish -                   | 1,185                                       | 4,612  | 5,797                            |
| Wool -----                                 | -----                                       | 22   | 22                               |
| Hides and leather ----                     | 1,692                                       | 5,072  | 6,764                            |
| Total -----                                | 54,923                                      | 154,768  | 209,691                          |
| Products of mines:                         |   |  |                                  |
| Anthracite coal -----                      | -----                                       | 131  | 131                              |
| Bituminous coal -----                      | 1,619,477                                   | 1,236,335  | 2,855,812                        |
| Coke -----                                 | 492   | 14,413   | 14,905                           |
| Ores -----                                 | 984   | 21,386   | 22,370                           |
| Stone, sand, and other like articles ----- | 154,375                                     | 40,531   | 194,906                          |
| Total -----                                | 1,775,328                                   | 1,312,796  | 3,088,124                        |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**

—Continued.

| COMMODITY                            | Freight Originating on this Road—Whole Tons | Freight Received from Connecting Roads and Other Carriers—Whole Tons | Total Freight Tonnage—Whole Tons |
|--------------------------------------|---|--|----------------------------------|
| Products of forests:                 |   |  |                                  |
| Lumber -----                         | 1,126,271                                   | 1,203,560  | 2,329,831                        |
| Total -----                          | 1,126,271                                   | 1,203,560  | 2,329,831                        |
| Manufactures:                        |   |  |                                  |
| Petroleum and other oils -----       | 32,218                                      | 70,053   | 102,271                          |
| Sugar -----                          | 124,431                                     | 896  | 125,327                          |
| Naval stores -----                   | 15,809                                      | 7,269  | 23,078                           |
| Iron, pig and bloom ---              | 9,517                                       | 59,483   | 69,000                           |
| Iron and steel rails ----            | 3,437                                       | 127,860  | 131,297                          |
| Other castings and machinery -----   | 11,417                                      | 90,156   | 101,573                          |
| Bar and sheet metal ---              | 32,631                                      | 77,469   | 110,100                          |
| Cement, brick and lime               | 96,894                                      | 75,089   | 171,983                          |
| Agricultural implements              | 8,007                                       | 16,145   | 24,152                           |
| Wagons, carriages, tools, etc. ----- | 5,948                                       | 5,566  | 11,514                           |
| Wines, liquors, and beers -----      | 22,125                                      | 33,191   | 55,316                           |
| Household goods and furniture -----  | 4,351                                       | 5,473  | 9,824                            |
| Total -----                          | 366,785                                     | 538,650  | 935,435                          |
| Merchandise -----                    | 132,036                                     | 217,941  | 349,977                          |

**FREIGHT TRAFFIC MOVEMENT—STATE OF KENTUCKY.**  
**(Company's Material Excluded.)**  
**—Continued.**

| COMMODITY   | Freight Originating on this<br>Road—Whole Tons | Freight Received from Con-<br>necting Roads and Other<br>Carriers—Whole Tons | Total Freight Tonnage—<br>Whole Tons |
|---|--|--|--------------------------------------|
| Miscellaneous: Other<br>commodities not<br>mentioned above -- | 319,347  | 490,835  | 810,182                              |
| Total tonnage—entire<br>line -----                            | 5,312,908                                      | 5,205,970  | 9,518,878                            |
|   |  |  |                                      |
|   |  |  |                                      |
|   |  |  |                                      |

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Comparisons of Expenses---Vari-  
ious Railroad and Corporation  
Commissions of the  
United States

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**EXPENSES AND APPROPRIATIONS OF VARIOUS STATE RAIL-  
ROAD AND CORPORATION COMMISSIONS. THESE  
FIGURES COMPILED FROM RECORDS IN OFFICE  
OF THE RAILROAD COMMISSION OF KEN-  
TUCKY, FURNISHED BY THE DIF-  
FERENT COMMISSIONS.**

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**KENTUCKY.**

**Three Commissioners:**

|  |            |
|--|------------|
| Chairman, salary -----                   | \$3,600 00 |
| Two Commissioners, \$3,000.00 each ----- | 6,000 00   |
| Rate Clerk, salary -----                 | 1,800 00   |
| Secretary, salary -----                  | 1,200 00   |
| Stenographer, salary -----               | 1,200 00   |
| Janitor, salary -----                    | 600 00     |

|   |          |
|---|----------|
| Office Expenses—telephone, telegraph, express, postage, and traveling expenses, Commissioners and subordinates, ----- | 3,000 00 |
|---|----------|

|             |             |
|-------------|-------------|
| Total ----- | \$17,300 00 |
|-------------|-------------|

**OKLAHOMA**

**Three Commissioners:**

|  |            |
|--|------------|
| Chairman, salary -----                               | \$4,000 00 |
| Two Commissioners, \$4,000 00 each -----             | 8,000 00   |
| Secretary, salary -----                              | 2,000 00   |
| Rate Clerk and Accountant -----                      | 2,500 00   |
| Marshal, salary -----                                | 1,500 00   |
| Two Official Reporters, salary \$1,200 00 each ----- | 2,400 00   |
| Corporation Record Clerk, salary -----               | 2,200 00   |
| Expert Rate Clerk, salary -----                      | 2,500 00   |
| Assistant Rate Clerk, salary -----                   | 2,000 00   |
| Assistant Rate Clerk, salary -----                   | 1,800 00   |
| Assistant Rate Clerk, salary -----                   | 1,500 00   |
| Assistant Accountant, salary -----                   | 1,800 00   |
| Assistant Accountant, salary -----                   | 1,500 00   |
| Chief Engineer, salary -----                         | 3,000 00   |
| Assistant Engineer, salary -----                     | 2,200 00   |
| Assistant Engineer and Draftsman, salary -----       | 1,500 00   |
| Telephone Engineer, salary -----                     | 2,400 00   |
| Assistant Telephone Engineer, salary -----           | 1,200 00   |
| Four Stenographers, salary \$1,200 00 each -----     | 4,800 00   |
| One Office Stenographer, salary -----                | 900 00     |

## THIRTIETH ANNUAL REPORT OF

|                                   |             |
|-----------------------------------|-------------|
| File Clerk, salary -----          | 1,200 00    |
| Multigraph Operator, salary ----- | 1,200 00    |
| Mail Clerk, salary -----          | 900 00      |
| Printing -----                    | 20,000 00   |
| Total, -----                      | \$73,000 00 |

## ARKANSAS

## Three Commissioners:

|   |             |
|---|-------------|
| Chairman, salary -----                          | \$ 2,500 00 |
| Two Commissioners, salary \$2,500 00 each ----- | 5,000 00    |
| Secretary, salary -----                         | 1,500 00    |
| Rate Clerk, salary -----                        | 1,500 00    |
| Stenographer, salary -----                      | 1,000 00    |
| Amount appropriated for Rate Litigation -----   | 50,000 00   |
| Incidentals, approximate -----                  | 2,500 00    |
| Total -----                                     | \$64,000 00 |

## MASSACHUSETTS

## Three Commissioners:

|   |             |
|---|-------------|
| Chairman, salary -----                          | \$ 6,000 00 |
| Two Commissioners, salary \$5,000 00 each ----- | 10,000 00   |
| Clerk, salary -----                             | 3,000 00    |
| Assistant Clerk, salary -----                   | 1,800 00    |
| Supervisor of Accounts, salary -----            | 2,500 00    |
| Seven Inspectors at \$2,000 00 each -----       | 14,000 00   |
| Consulting Engineer -----                       | 3,000 00    |
| Stenographer and other Clerks, salaries -----   | 4,900 00    |
| Printing, Annual report -----                   | 5,385 51    |
| Printing, other printing and binding -----      | 2,063 69    |
| Office Expenses -----                           | 12,263 48   |
| Total -----                                     | \$64,912 68 |

## OHIO

## Three Commissioners:

|  |             |
|--|-------------|
| Chairman, salary -----                   | \$ 5,000 00 |
| Two Commissioners, \$5,000 00 each ----- | 10,000 00   |
| Secretary, salary -----                  | 2,500 00    |
| Two Clerks, salary -----                 | 1,000 00    |
| One Stenographer, salary -----           | 1,200 00    |

|  |             |
|--|-------------|
| One Tariff Clerk, salary .....         | 1,800 00    |
| One Statistician, salary .....         | 1,800 00    |
| One Expert Stenographer, salary .....  | 1,500 00    |
| Four Inspectors, \$1,500 00 each ..... | 6,000 00    |
| One Extra Stenographer, salary .....   | 1,200 00    |
| One Claim Clerk, salary .....          | 900 00      |
| One Messenger, salary .....            | 900 00      |
| Other Expenses not itemized .....      | 4,500 00    |
| Total .....                            | \$38,300 00 |

## ILLINOIS

## Three Commissioners:

|   |             |
|---|-------------|
| Chairman, salary .....  | \$3,500 00  |
| Two Commissioners, salary \$3,500 each .....                              | 7,000 00    |
| Secretary, salary .....   | 1,500 00    |
| Assistant Secretary, salary .....   | 1,500 00    |
| Consulting Engineer, salary .....   | 3,000 00    |
| Rate Clerk, salary .....  | 3,000 00    |
| Reporter, salary .....  | 1,200 00    |
| Stenographer, salary .....  | 1,200 00    |
| Janitor, salary .....   | 800 00      |
| Safety Appliance Inspector, salary .....                                  | 1,500 00    |
| Stationery, postage, expressing and telegraphing ....                     | 4,000 00    |
| Expenses Commissioners and other officers, suits and investigations ..... | 6,000 00    |
| Printing, Classification and schedules .....                              | 1,000 00    |
| Printing, Railroad maps .....   | 2,000 00    |
| Total .....   | \$37,200 00 |

## ALABAMA

## Three Commissioners:

|   |             |
|---|-------------|
| Chairman (President) Salary .....               | \$3,500 00  |
| Two Commissioners, salary \$3,000 00 each ..... | 6,000 00    |
| Secretary, salary .....                         | 2,400 00    |
| Stenographer, salary .....                      | 1,200 00    |
| Office Expenses and Experts .....               | 6,000 00    |
| Total .....                                     | \$19,100 00 |



## MINNESOTA

## Three Commissioners:

|  |             |
|--|-------------|
| Chairman, salary .....                               | \$4,500 00  |
| Two Commissioners, \$4,500 00 each .....             | 9,000 00    |
| Secretary, salary .....                              | 2,600 00    |
| Assistant Secretary, salary .....                    | 2,600 00    |
| Chief Clerk, salary .....                            | 2,000 00    |
| Clerk, salary .....                                  | 900 00      |
| Clerk, salary .....                                  | 720 00      |
| Stenographer, salary .....                           | 1,320 00    |
| Stenographer, salary .....                           | 1,080 00    |
| Engineer, salary .....                               | 1,680 00    |
| Printing, and other contingencies, approximate ..... | 17,600 00   |
| Total .....  | \$35,000 00 |

## PENNSYLVANIA

## Three Commissioners:

|   |             |
|---|-------------|
| Chairman, salary .....                                    | \$ 8,000 00 |
| Two Commissioners, \$8,000 00 each .....                  | 16,000 00   |
| Secretary, salary .....                                   | 4,000 00    |
| Attorney, salary .....                                    | 4,000 00    |
| Marshal, salary .....                                     | 2,500 00    |
| Two Assistant Attorneys, salary \$2,500 00 each .....     | 5,000 00    |
| Six Clerks and stenographers, salaries \$1,400 00 each .. | 8,400 00    |
| Total .....   | \$47,900 00 |

## NEBRASKA

## Three Commissioners:

|   |             |
|---|-------------|
| Chairman, salary .....                            | \$ 3,000 00 |
| Two Commissioners, salaries \$3,000 00 each ..... | 6,000 00    |
| Salaries of Office Help .....                     | 8,834 98    |
| General Office Expense .....                      | 8,676 27    |
| Appropriated for valuation or railroads .....     | 40,000 00   |
| Total .....                                       | \$66,511 25 |

## GEORGIA

## Five Commissioners:

|  |             |
|--|-------------|
| Chairman, salary .....                           | \$ 4,000 00 |
| Four Commissioners, salary \$2,500 00 each ..... | 10,000 00   |
| Rate Expert, salary .....                        | 3,000 00    |
| Expense Account, Rate Expert .....               | 1,000 00    |
| Special Attorney, salary .....                   | 2,500 00    |

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|                                    |          |
|------------------------------------|----------|
| Secretary, salary .....            | 2,000 00 |
| Stenographer, salary .....         | 1,200 00 |
| Printing and Contingent Fund ..... | 5,000 00 |

Total ..... \$28,700 00  
TEXAS

Three Commissioners:

|   |            |
|---|------------|
| Chairman, salary .....                                | \$4,000 00 |
| Two Commissioners, salary \$4,000 00 .....            | 8,000 00   |
| Secretary, salary .....                               | 1,700 00   |
| Rate Clerk, salary .....                              | 1,500 00   |
| General Clerk, salary .....                           | 1,200 00   |
| General Clerk, salary .....                           | 1,200 00   |
| Expert Accountant salary .....                        | 2,700 00   |
| Assistant Expert Accountant and Rate Clerk, salary .. | 1,800 00   |
| Expert Rate Clerk, salary .....                       | 2,700 00   |
| Assistant Rate Clerk, salary .....                    | 2,500 00   |
| Civil Engineer, salary .....                          | 3,000 00   |
| Porter, salary .....                                  | 480 00     |
| Contingent, transportation, postage, etc .....        | 6,500 00   |

Total ..... \$37,280 00

OREGON

Three Commissioners:

|   |            |
|---|------------|
| Chairman, salary .....                                | \$4,000 00 |
| Two Commissioners, salary \$4,000 00 each .....       | 8,000 00   |
| Secretary, salary .....                               | 2,000 00   |
| Rate Clerk, salary .....                              | 1,800 00   |
| Stenographer, salary .....                            | 1,200 00   |
| Engineer, salary .....                                | 4,200 00   |
| Assistant Engineer, salary .....                      | 1,500 00   |
| Appropriated for valuation of railroad property ..... | 5,000 00   |
| Appropriated for Legal expenses .....                 | 5,000 00   |

Total ..... \$32,700 00

CALIFORNIA

Three Commissioners:

|                                      |             |
|--------------------------------------|-------------|
| Chairman, salary .....               | \$ 6,000 00 |
| Commissioners, \$6,000 00 each ..... | 12,000 00   |
| Secretary, salary .....              | 3,000 00    |
| Assistant Secretary, salary .....    | 1,800 00    |
| Reporter, salary .....               | 1,500 00    |
| Stenographer, salary .....           | 900 00      |
| Rent, .....                          | 1,200 00    |

|                                 |                    |
|---------------------------------|--------------------|
| Fuel, lights, etc .....         | 600 00             |
| Contingent, printing, etc ..... | 10,000 00          |
| Total .....                     | <u>\$37,000 00</u> |

## VIRGINIA

## Three Commissioners:

|  |                  |
|--|------------------|
| Chairman, salary .....                           | \$4,000 00       |
| Two Commissioners, salary \$4,000 000 each ..... | 8,000 00         |
| Clerk to the Commission, salary .....            | 2,500 00         |
| Assistant Clerk, salary .....                    | 1,800 00         |
| Assessment Clerk, salary .....                   | 1,500 00         |
| Two Additional Clerks, \$1,200 00 each .....     | 2,400 00         |
| Bailiff, salary .....                            | 1,200 00         |
| Stenographer, salary .....                       | 1,200 00         |
| Stenographers, two, \$900 00 each .....          | 1,800 00         |
| Messenger, salary .....                          | 600 00           |
| Janitor, salary .....                            | 720 00           |
| Contingent, .....                                | 3,380 00         |
| Total .....                                      | <u>29,100 00</u> |

## WISCONSIN

## Three Commissioners:

|  |                    |
|--|--------------------|
| Chairman, salary .....   | \$ 5,000 00        |
| Two Commissioners, \$5,000 00 each .....   | 10,000 00          |
| Other Expenses, divided into different items, covering<br>salaries of approximately fifty employees,<br>and other expenses ..... | 74,053 61          |
| Printing, paper and waste .....  | 10,765 80          |
| Total .....  | <u>\$99,819 41</u> |

## NORTH CAROLINA

## Three Commissioners:

|  |                    |
|--|--------------------|
| Chairman, salary .....                   | \$3,000 00         |
| Two Commissioners, \$3,000 00 each ..... | 6,000 00           |
| Clerk, salary .....                      | 2,700 00           |
| Stenographer and Assistant, salary ..... | 1,200 00           |
| One Clerk, salary .....                  | 1,500 00           |
| One Clerk, salary .....                  | 1,200 00           |
| One Examiner, salary .....               | 2,400 00           |
| One Examiner, salary .....               | 1,800 00           |
| Porter, salary .....                     | 540 00             |
| Traveling Expenses and incidentals ..... | 4,000 00           |
| Total .....                              | <u>\$24,340 00</u> |

## OBITUARY

---

Frankfort, Ky., June 25, 1909.

The Hon. McD. Ferguson was born May 16, 1858, in Montgomery County, Tennessee, and died June 17, 1909, at his home near La Center, Ballard County, Kentucky, at the age of 51 years and 31 days old. He was married to Miss Inez Kimbrough January 21, 1886, who died May 29, 1902, leaving five children to the care of their father, McD. Ferguson.

He always took an active interest in politics, and was, indeed, a successful public servant. He was elected to the Lower House of the General Assembly of Kentucky three times, beginning his service in that body in the year 1891.

Mr. Ferguson was elected to the State Senate of Kentucky in 1897, and was re-elected to the same office in 1901, having served well and faithfully in the law making body of the State; his constituents kept him in that position until he was called to serve the Commonwealth in the higher and more responsible position of Railroad Commissioner in 1903. He served in that capacity from 1903 until 1907, and was reelected by the First Railroad Commissioner's District of Kentucky for a four year term, which began December 10, 1907, and on the date of his death he was serving his second term of office as Railroad Commissioner. His health began to fail him two years before his death.

In addition to these positions of public trust and service which had been held by the subject of this communication, he was also at one time trustee of the State College of Kentucky for four years; and he also served one term as Deputy Collector of Internal Revenue in Western Kentucky during the administration of President Cleveland.

While Mr. Ferguson was a consistent democrat, he was

never partisan or unpleasant among those who disagreed with him in his political views. The history of his life is well written in the history and public affairs of the State of Kentucky from the year 1890 until his death, June 17, 1909.

We who knew him best are best qualified to speak of his virtues and of his faultless life. As a public servant he was faithful, painstaking, industrious and courageous. As a father he was kind, loving, noble and true. As an associate in office he was willing to, and did, do as much, and even more, than his share of the demands put upon him and his associates, and we who were associated with him were fortunate to have had such a noble companion, who was always ready to go at every duty's call. He was held in the highest esteem by all who knew him.

RESOLVED, That by the death of the Hon. McD. Ferguson the Railroad Commission of Kentucky has lost a wise, and efficient member, the State a valuable public servant and his bereaved family a noble-hearted, kind and affectionate father.

RESOLVED, That the foregoing statement be entered as an order in the office of the Railroad Commission of Kentucky on the order book kept for public records; that a copy of same be published in the annual report of the Railroad Commission of Kentucky for the year 1909, and that a copy of said report be sent to his bereaved family at LaCenter, Kentucky.

A. T. SILER, *Chairman.*

L. P. TARLTON, *Commissioner.*

JOHN P. HASWELL, JR., *Commissioner.*

ROY WILHOIT, *Rate Clerk.*

D. B. CORNETT, *Secretary.*

MINNIE MURPHY, *Stenographer.*

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